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# THE RESPONSA OF THE BABYLONIAN GEONIM AS A SOURCE OF JEWISH HISTORY\*

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## III. THE ECONOMIC CONDITIONS OF THE JEWS.

THE Geonim did not intend to give a full account of the occupations of the Jews of their time. Yet from occasional questions addressed to them concerning religious problems, e.g. the Sabbath, and concerning the Jewish civil law it is possible to form a good idea of the activities of the Jews both in agriculture and in commerce. This material has been entirely overlooked till now, so that our knowledge of the economic position of the Jews in the Orient and in Spain under Arab rule was declared to be very scanty (see Caro, *Social- und Wirtschaftsgeschichte der Juden im Mittelalter*, Leipzig, 1908, p. 469; notes to pp. 124-7).<sup>222</sup> The only reference to Jews themselves cultivating their fields Caro could find was in 'Anan's arrangement of the Karaite calendar (*ibid.*, p. 469). In four pages (124-7) Caro disposes of the economic position of the Jews of that period. Heyd, *Geschichte des Levantehandels*, I, 138-42, characterizes the Jews in the early Middle Ages as 'fast *ausschliesslich* den Handelsgeschäften lebend'.

But the Gaonic Responsa establish the fact beyond the shadow of a doubt that to a very large extent the occupa-

\* See vols. VII, 457-90, VIII, 339-66, IX, 139-79, X, 121-51.

<sup>222</sup> About the occupations of the Jews in the Byzantine Empire, see now Krauss, *Studien zur Byzant.-Jüd. Geschichte*, Vienna, 1914, 70-76.

tion of the Jews of that period consisted of agriculture. A great number of Jews possessed fields, gardens, and, especially in Spain and southern France, vineyards which they frequently cultivated themselves or by means of tenants (אריסים) as was especially the case in Babylon. It is only towards the end of the Gaonic period, when persecutions became frequent in France and Germany, that the Jews were gradually compelled to gain a livelihood entirely by commerce and money-lending. On the other hand, from the Responsa we learn of the considerable trade, both inland and maritime, carried on by Jews particularly in the North African ports. The part that the Jews of that period played in the Levantine trade must have been considerable, as the evidence of the Responsa proves. Heyd, *ibid.*, not taking this material into consideration, regards the participation of the Jews in the Levantine trade as problematic.

(a) *Agriculture.*

1. In the second half of the eighth century the Geonim of the two Academies of Sura and Pumbedita in conjunction with the Exilarch abrogated a Talmudic law and instituted that debts from orphans should be exacted also from movable property, whereas before that time only landed property could be claimed by the creditors of the deceased parent of the orphans.<sup>223</sup> The reason for this institution is clearly given in a responsum of the Gaon R. Moses (832 C.E.) who held office forty-five years after

<sup>223</sup> Sherira (*Letter*, p. 36, ll. 9-10) states: וקם בתריה מר רב הונא בר מר הלוי בר מר יצחק בשנת צ"ו וביומיה תקינו למיגבי בע"ח וכתובה מן יתמי ממטלמלי (cp. p. 37, ll. 10-11). The institution was made in 1098 Sel. = 787, C. E., according to Isaac Albarceloni, שערי שבועות, end.

its introduction, and must have known well the motives and the conditions that occasioned this institution. The Gaon states that the scholars instituted the exacting of a woman's dowry, as well as other debts from movable property belonging to orphans, because in the districts around the academies most people had no fields, whereas in other places where the majority of people have fields, this institution applies only partially.<sup>224</sup> We thus see that a change in the economic conditions of the Jews in 'Irāk necessitated an institution which must have been the result of a long development. Perhaps the building of Bagdad in 762, which soon became a large commercial centre and attracted many Jews (cp. above, VII, 465 ff.), contributed to a considerable extent to the necessity of this institution. But to conclude from this that under the Caliphs the Jews over the whole Moslem Empire abandoned agriculture and devoted themselves to commerce, as Graetz (V<sup>4</sup>, 196), does, is entirely erroneous as the responsum of the Gaon R. Moses, cited above, clearly shows. It is true that the decree of this institution, signed with the seals of the Exilarch and the two academies, was sent to all Jewish communities in the diaspora for practical application, as the author of the 'Ittur (ed. Venet. 20 a, 77 b) states. But this does not imply that all over the diaspora the

... תקינו רבנן למגבי כתובת אשה ובע"ה אפי' ממטלטלי ח"ג, No. 65: משום דהכא רובא דעלמא לית להון מקרקעי . . . ואסמכינון על כמה טעמי דלא אפשר לפרשינון אבל בשאר מקומות דרובא דאינשי אית להון מקרקעי אי לא מפרשין מטלטלי בחיי ובמותי לא גביין כתובת אשה ובע"ה אלא ממקרקעי. . . This responsum was probably sent to some North-African community, since the group of responsa consisting of Nos. 62-7 seems to have been sent to one and the same community (notice the beginnings מברכין מוקפין (תוב שאלתון), and in No. 63 the correspondents write: בנלותנו במדינת הים).

same conditions existed. Certainly if a Talmudic law was changed by the Geonim, its acceptance by all the Jews had to be enjoined in order not to create divisions in Israel.

Anyhow, we see that in 'Irāk proper the Jews turned more to commerce than to agriculture. The latter was often found unprofitable since the country was frequently devastated by the wars between the opposing forces amongst the Arabic conquerors. In particular, during the whole reign of the Omeiyade dynasty till it was supplanted by the 'Abbasids (661-749), 'Irāk was the hotbed of opposition against the ruling dynasty. In addition the land-tax, *harāj*, which 'Omar imposed at the conquest of Babylon, was fixed in accordance with the extent of the estate without any regard to its real produce. All this contributed to the pauperization of the peasant-class in 'Irāk. In the time of 'Abdulmalik (685-705), i. e. about fifty years after the conquest, the revenue of the 'Irāk fell from 100 to 40 million Dirhems per year. The whole canal-system of Mesopotamia, on which its agriculture so greatly depended, was much neglected during these fifty years. Some improvements were made by Ḥajjāj, the governor of 'Abdulmalik in 'Irāk, but special attention to the improvement of agriculture in 'Irāk was only paid after the accession of the 'Abbasids. The *harāj*-system was also changed into a tax on the produce of the estates. But even this was very high, at first half the produce, later on two-fifths.<sup>225</sup> We can now understand why most Jews in 'Irāk gave up agriculture and occupied themselves with commerce and trade as the above institution of the Geonim in the year 787 shows.

<sup>225</sup> Cp. Aug. Müller, *ibid.*, I, pp. 272, 281 (bottom), and 282, 395, and 467; also Kremer, *ibid.*, I, 276 ff.

Yet there must have been a considerable number of Jews in 'Irāk who possessed landed property even after 787. We find the Gaon R. Ṣadoḳ (of Sura, 823) imposing oaths in connexion with claims put forward on estates and fields though the Talmudic law, as laid down in the Mishna (Shebuot 61), is that in such lawsuits no oaths are imposed.<sup>226</sup> As the Geonim were very careful not to change a Talmudic law unless the requirements of the time were pressing, we may assume that lawsuits about estates and fields amongst Jews were frequent, and the Geonim found out that people took dishonest advantage of the fact that no oaths were imposed in such lawsuits, and therefore the Gaon R. Ṣadoḳ boldly put an end to this state of affairs (cp. also Weiss, דור דור ודורשי, IV, 38-9). We see thus that fields in the possession of the Jews in Babylon must have been quite a common occurrence even in later times. In an appeal for the support of his academy made by a Gaon in 953 it is stated that the scholars of the academy were in need because they had lost their landed property.<sup>227</sup> Very likely these scholars did not cultivate their fields themselves, but only through tenants who took a third or a fourth of the produce as it was the custom with Babylonian Jews centuries before in the Talmudic times (cp. Funk, *Die Juden in Babylon*, I, 15). This is further corroborated by a question sent to R. Hai, the last of the Geonim (998-1038), which probably came from Babylon.<sup>228</sup> The correspondents state

. . . וקבלוה חכמי ישיבה ממנו: (ג"ק, No. 43) (cp. ח"ג, No. 22).  
(ר' צדוק sc.) ונהגו בה בשתי ישיבות לרלווי נזרתא על מקרקעי במטלטלי דלא  
שבועה דאורייתא.

<sup>227</sup> Cp. the letter cited above, VII, 486: וגם הקרקעות שהיו לנו חרבו ונאבדו באותן השנים הרעות שעברו עלינו אפסו כספינו וקרקעותינו (ibid., p. 402, fol. 42).

<sup>228</sup> אנו יש לנו גנות ופרדסין ובהם: II, תש"ר, No. 65 = ג"ל, No. 63.

that the people in their community have gardens as well as other estates which some may irrigate whenever they like, while other people may do that only on Sabbaths according to an ancient usage. These owners of the fields have non-Jewish tenants who receive a fifth of the produce and do all the required work, while the owners take no part in the cultivation of their estates. This probably refers to the system of irrigation by means of canals as it was practised in Babylon where the fields adjacent the canals would be irrigated in turns according to a fixed order.

On the other hand, there are several responsa that refer to Jews cultivating their fields and especially their vineyards. The responsa unfortunately do not tell us to which country they were addressed. In the case of responsa that deal with the cultivation of vineyards we may assume that most likely they were sent to Jews in Spain and southern France. They cannot refer to Babylon because wine-growing was rare in that country. But some of the other responsa that deal with the cultivation of fields probably refer to Babylonian conditions. So many responsa deal with cases of landed property that the conclusion forces itself upon one that landed property in the possession of Jews was the most usual thing.<sup>229</sup> A poor Jew

שדה לבן ושדה אילן ומהן שיכולין בעליהן להשקותן כל זמן שירצו ומהם אין להם חוק להשקותן אלא ביום השבת חק ולא יעבור מימי הקדמונים ויש לנו אריסין גוים שלוקחין חומש מן הפירות והן משקין ועושין כל מה שרוצים והיהודי בעליהם לא ידע עמם מאומה. Cp. also *Geon.*, II, 263, l. 22 ff.

<sup>229</sup> The following is a list of responsa referring to landed property, excluding those discussed in this chapter :

R. Natronai : ש"צ, 46 a, Nos. 9 and 10.

R. Sheshna : ש"צ, 46 b, No. 14.

as soon as he acquired some money, had it invested in fields (ח"ג, No. 138, by R. Hai). These were given as dowry to daughters (ש"צ, 62 a, No. 35, by Saadya ; 67 a, No. 55, by R. 'Amram ; חש"ר, II, 28, No. 5 = גמ"מ, No. 138 ; גמ"מ, No. 87) and were inherited from generation to generation. A newly married couple would invest their dowry in fields (גמ"מ, No. 91). A responsum by R. Natronai tells us of the majority of a whole community gaining a livelihood only from their vineyards which they cultivated themselves.<sup>230</sup> Many Jews were occupied in gathering the grapes and treading them in the wine-presses, since according to the Talmudic law this could not be done by non-Jews.<sup>231</sup>

2. Some of the responsa referred to above might have been sent to the communities in North Africa. But even those responsa, expressly stated as having been sent to these Jewish communities, testify that Jews generally owned fields and orchards, and probably the small holders themselves cultivated their fields. Thus we find landed property in the possession of Jews of Tlemsen (גמ"מ, No. 133 and ג"ה, Nos. 38-9, by Sherira or by Hai), of Kābes (ג"ה, Nos. 318, 322, 324, and 342-3), of Nefusa (ש"צ, 56 a, Nos. 16 and 17, cp. above, VII, 484), and chiefly of Kairouan. An interesting responsum describes the devices Jewish money-

R. Naḥshon : חש"ר, II, 30, No. 8 ; ג"ק, No. 7 (probably) ; ש"צ, 53 a, No. 53 (cp. Müller, *Einleit.*, 14, note).

R. Sam. b. Ḥofni : ש"צ, 45 b, No. 7 ; 48 a, No. 24.

R. Hai : ח"ג, No. 135.

Anonymous : ש"צ, 39 a, No. 14 ; 39 b, No. 15 ; 46 a, No. 21.

<sup>230</sup> גמ"מ, No. 86 ; שרובן של אנשי המקום אין להם מומן אחר אלא  
אותן כרמים.

<sup>231</sup> ג"ל, No. 6, by R. Paltoi (842-58) ; ש"ת, No. 211 = ה"פ, No. 156, by Sar Shalom, cp. further, *Geon.*, II, 153 (תקע"ד).



lenders used to employ in order to evade the law of usury when they advanced money on fields in mortgage.<sup>232</sup> Yet in Ḳairowan people frequently required money for investing in commerce which flourished there. Ḳairowan was an important station on the caravan-route from Spain to Egypt and farther, and close by there were important ports for the maritime trade with the above two countries. Thus it resulted that already in the period of the earlier Geonim a considerable number of Jews there possessed no fields. When a power of attorney (שטר הרשאה), which according to Talmudic law required the possession of at least four cubits of ground, was drawn up, recourse had to be taken to a device to rely on the four cubits of ground which every Jew was supposed to possess in Palestine as a national heritage though at present occupied by usurpers.<sup>233</sup> That such a device had to be found shows clearly that a considerable number of Jews in Ḳairowan possessed no landed property but occupied themselves solely with commerce and trade.

3. Above (p. 314) it was pointed out that the responsa of the Babylonian Geonim that deal with the cultivation

היה מנהג : <sup>232</sup> ש"צ 36 a, No. 12 (probably by Hai, cp. *Einleit.*, 14, note) : באלקירואן שהיו אנשים מלויים מעות על הקרקעות והיו שוכרין הקרקע בפחות ממה שהיא שוה והוזהרו על זה ממתיבתא הקדושה ונאמר להם . . . שהוא אבק רבית וחזרו למכור הקרקע במעות . . .

<sup>233</sup> ג"ה Nos. 199-200, by R. Hai. The correspondents from Ḳairowan state : וכמה מבעלי המתנות והיורשים שאין להם קרקע והיה דעתן סמכין : מאותן הימים הראשונים ועד עתה על ארבע אמות קרקע שלכל אחד ואחד בארץ ישראל כמו שמצאו בתשובות הגאונים הראשונים ששאלו . . . אבותיהם מן מר הילאי נאון נ"ע . . . According to this statement this legal device goes back to the time of R. Hilai (either the Gaon of Sura in 792-801 or his namesake in 825-9). Cp. also Pardes, *ליקוטים* 24 a, and Harkavy, ג"ה, p. 359, note to p. 90.

of vineyards were most likely sent to communities in Spain or southern France. In addition there is a collection of responsa by Spanish and French scholars, contemporaries of Sherira and Hai, which throw much light on the question we are dealing with here. We find again landed property the most common possession in the hands of Jews. It appears that Jews as owners of fields, and particularly of vineyards, were more frequent in Spain and in France than in North Africa or Babylon. Vineyards as a part of a woman's dowry were the usual thing. So we find R. Meshullam in a responsum which was probably sent to southern France dealing with the case of a man who married three wives in succession and each had vineyards for her dowry (פ"ג, No. 132).<sup>234</sup> It seems as if the only possession of the middle-class people amongst the Jews were these vineyards. A Jew having to pay an imposition of the governor, sells his vineyard (גמ"מ, No. 201, anonymous). Likewise in another case a woman in trying to obtain money in order to pay a debt to a non-Jew, pledges her vineyard (*ibid.*, No. 204, by R. Ḥanok). In many cases the Jews themselves probably cultivated their estates, especially as the last stages of gathering the grapes and producing the wine had to be done by Jews only.<sup>235</sup> A responsum states that the majority of the Jews of a com-

<sup>234</sup> As regards Spain, cp. גמ"מ, Nos. 175-6, 202, 203, and 206 (all by R. Ḥanok of Cordova).

<sup>235</sup> Cp. גמ"מ, No. 202, by R. Enoch: כשנדלו הבנים סיעו את אביהן וגדרו את השדה שהוציאה לאה ונטעו אותה נטע יפה מן אילנות וגפנים ער שהיה כרם משובח. For further responsa referring to fields and vineyards, see by R. Meshullam: פ"ג, No. 139; גמ"מ, Nos. 173, 188 (cp. above, p. 314), 189 (probably, cp. Müller, note 1); ש"צ, 40 b, No. 23; by Spanish scholars: גמ"מ, Nos. 196 (cp. Müller, note 1), 197, 200, and 210 (by R. Moses b. Ḥanok), 207, 208-9 and 211 (by R. Ḥanok).

munity possessed oxen, horses and asses, animals required for the cultivation of fields and vineyards.<sup>236</sup> This must have been the case in other communities as well.

We see thus that till the beginning of the eleventh century both in Spain and in France the Jews occupied themselves much with agriculture, and particularly with the cultivation of vineyards (see also Müller, *Die Responsen der spanischen Lehrer des 10. Jahrhunderts*, pp. 6-7). Only when the persecutions became more and more frequent in Germany (cp. Gr., V<sup>4</sup>, 384-7) and in France, and frequent expulsions of Jews from certain towns and districts took place, did the Jew find it safer to invest his money in commerce or in money-lending in order to be able to convert his belongings into cash the more easily in time of need. This development of the economic conditions of the Jews in France is best illustrated by the change that took place in the method of taxation in use amongst the Jewish communities. The earlier custom was to distribute the tax evenly—for which the whole community was responsible to the government—on the Jewish owners of fields in the adjacent villages and on the business men, as we learn from the evidence of two responsa.<sup>237</sup> But in the

<sup>236</sup> וּשְׂשֹׂאֵלֶת יִשְׂרָאֵל: ג"ק, No. 92 (cp. *Einleit.*, 25, note to No. 93): שִׁישׁ לוֹ שׁוּרִים וְסוּסִים וְחֲמֹרִים וְאִינוּ יֹכֵל לַרְעוֹתָם בְּעִיר . . . אֲבָל לַחֲדָרֹת לַרְבִּים וְלַאֲסוּר לָהֶן כִּיּוֹן שֶׁנֶּהֱגוּ בְּדַבָּר הַזֶּה וְאִין יֹכֵלִין רַב הַצְבּוֹר לִנְהוֹג . . . בּוֹ אִיסוּר כְּמוֹ שֶׁנִּתְבַּתֵּן בְּכַתְּבָךְ . . . (Cp. ש"ת, No. 214 (see Müller, *Einleit.*, 21, note) and No. 221).

<sup>237</sup> . . . כִּיּוֹן שֶׁקָּבְלוּ: גמ"מ, No. 165 (probably to a French community): עֲלֵיהֶם בְּנֵי הַקָּהָל כֹּלָה וְנִכְלָלוּ בְּעַלֵּי הַכִּפְרִים לַהֲכַלִּיל הַפְּרִיעָה שֶׁעַל הַכִּפְרִים כֹּלֶם וְלַהֲמִיל עַל כָּל כֹּפֶר וְכֹפֶר לְפִי מִדַּת קֶרְקָעוֹתָיו וְכֵן לַהֲשַׁתָּתוֹת בַּהֲשָׁדָה שֶׁמִּשְׁחִירִין לְסַלֵּק הָאוֹנֶם מֵעֲלֵיהֶם . . .

גמ"מ, No. 205 (seemingly by R. Nathan the Babylonian of Narbonne, a contemporary of R. Moses b. Hanok, see Müller, note 1): . . . וּבִלְבָד:

middle of the eleventh century the tax on fields was no longer continued and the traders, who must have formed the majority in the communities, were asked by the communal leaders to contribute the whole amount. R. Joseph Bonfils, a well-known French scholar, in a responsum to the Jews of Troyes in justifying this change explains that the possession of fields in his time by Jews was entirely unprofitable, because they used to let them to tenants who took half the produce, and there were other expenses that caused the profit accruing from the cultivation of fields to dwindle. Whereas money invested in commerce brought great profits and could easily be withdrawn, a quality very essential to the Jews in their peculiar position of uncertainty and threatening persecutions.<sup>238</sup> This important responsum helps us to understand the gradual change in the economic position of the Jews so that they became exclusively a commercial people estranged from the soil.

שיעשו מנהג המקום כמו שנהגו אבותיכם קודם היום להטיל על מי שיש לו מאה דינר בקרקע או מי שיש לו מאה זהובים בסחורה אל ישנו ממנהג הראשונים . . .

<sup>238</sup> This responsum is quoted by R. Meir of Rothenburg (תשובות מהר"ם) ed. Prague, No. 941 = מדרבי to Baba batra, ch. 1, § 481): ואני ראיתי: תשובת רבינו יוסף טוב עלם שכתב לבני טרויש שבקשו להטיל מס על הכרמים של לאה שוה בשוה כמו על שאר חובות ומעות ופרקמטיא והשיב שאין בכל הסחורות השכר מצוי כמו ברבית וכן פרקמטיא היא נוחה ומצלחת וכספו או תמורתו ביד אפשר בלא הפסד דווי דאינשי עבדי ליה סרסירא לאפוקי ארעא דבעיא סרים דשקל מחצה. [ו]עלה כמה הרפתקי כמו רוב חמה או רוב צנה או מיעוט גשמים, ארבה או חסיל ואי אפשר להחביא ולעשות לו [שמור] כשאר עמלו . . . לכן אין להכביר עליהם כשאר פרקמטיא האם כן הקרן כלה . . .

*(b) Commerce and Trade.*

With the wonderful expansion of the Muslim Empire large possibilities were opened up for the commerce from the Orient to the Occident and vice versa. Caravans could traverse the great distance from India to Spain passing through the provinces of one and the same empire. Likewise the greatest part of the coastline of the Mediterranean was in the possession of the Arabs, and thus a large maritime trade could spring up (see especially Kremer, *Culturgeschichte des Orients*, II, 273 ff.: Handel u. Gewerbe). It was strictly prohibited to impose customs on goods transported from one province of the state to another (Kremer, *ibid.*, I, 457). Only later on in the period of the decline of the Califate, when the empire was split up into several semi-dependent states, was this freedom of trade greatly restricted (Kremer, *ibid.*, II, 494). That the Jews availed themselves of these opportunities is only natural; especially those Jews that lived in large commercial centres like Bagdad and Basra, Fustât, Kairawan, and Tlemsen, and the Spanish towns situated along the eastern coast of Spain.

Above (VII, 465 ff.) we have seen how in Bagdad there grew up a large Jewish community owing to the considerable trade that flourished there. In Babylon the Jews possessed mills, inns, public baths and, particularly, olive presses.<sup>239</sup> Often they let these to non-Jews who could carry on business even on Sabbaths. The same applies also to the

<sup>239</sup> Cp. ג"ל, No. 64 (by R. Hai): ומעשים בכל יום נעשין בבבל שיש ; בתי ברים לישראל ומשכירין אותן לגוים ולא מיהו בידם חכמים ; ג"ח, No. 10 (either by R. Paltai or by R. Natronai) ; גמ"מ, No. 15 (anonymous). See also גמ"מ, No. 164.

Jews outside Babylon who owned in addition public ovens (פורני, cp. ג"ק, Nos. 62 and 123, by R. Meshullam; גמ"מ, No. 110 by R. 'Amram). There were certain trades like the preparation of wine, butter, and cheese, and parchment, which on religious grounds Jews had to conduct by themselves; thus we find the Geonim having a good knowledge of how parchment was made.<sup>240</sup> Several responsa show that Jews frequently travelled on the large navigable rivers like the Tigris, Euphrates, and Nile, and traversed the Mediterranean in pursuit of a livelihood. The Geonim were consulted as to the observance of the Sabbath on board ship.<sup>241</sup> Similar questions were asked how the Sabbath should be kept while travelling in caravans (ה"פ, No. 155, by Sherira; גמ"מ, No. 27; ש"צ, 12 a, No. 11, see Müller, *Einleit.*, 14, note). In one responsum Sherira mentions that Jews from the west (probably from Spain or Morocco) would come in caravans to Egypt traversing a great distance through desert land.<sup>242</sup> Jews used to travel far and wide in their business enterprises, which often kept them away from their homes for years (see ש"צ, 76 b, No. 26; ח"ג, No. 49; ג"ק, No. 17). This must have

<sup>240</sup> See גמ"מ, No. 155; ח"ג, Nos. 113-17; ג"ק, Nos. 33 and 46; ג"ה, No. 5 (to Kairovan); ג"ק, No. 127, by R. Meshullam; ש"ח, No. 332.

<sup>241</sup> מהו לנהוג מנהג זה: ג"ל, No. 61 (probably to Egypt by R. Hai): בנהרות גדולות כגון דגלת ופרת ונילוס של מצרים . . . ובני מצרים (probably Fustât) וכפריה היו נוהגין איסור חמור בנילוס שלהם והיו ממהרין לצאת בערב שבת . . . אנו לא שמענו מאבותינו ולא מהכמי שתי ישיבות מי שהתיר לישב בספינות בנהרות לא בחקל ולא בפרת . . . See further: ג"ל, No. 45 (p. 17 b and 18 a by R. Jehudai, 760-64); ח"ג, No. 31 (by R. Šemah) and 43 (by R. Naḥshon).

<sup>242</sup> In איתשיל עלה רבנא שרירא גאון זצ"ל: ספר העתים, ed. Schorr, 76: וזו הוא נוסחא . . . וכן מי שהלך בדרך כגון בני מערב שנוהגין לבוא [אל מצרים] בשיירות והדרך ארוכה היא למאד ורוב שביתתם במדבר . . .

happened very frequently so that the Bêt-Din had to take the matter in hand, since it entailed many hardships for women who were left without their husbands for years. R. Natronai (of Sura, 853-6) states that the Bêt-Din used to warn and to enjoin those that left their homes for business purposes not to stay away too long, especially when their wives objected to their husbands taking long and dangerous journeys.<sup>243</sup>

From the responsa we learn further of partnerships between Jews who lived in different countries, and that in many cases the goods had to be sent by ship from the place of one partner to that of the other (see ש"צ, 78 b, No. 8, by Saadya; 40 b, No. 24 = תש"ר, II, 34, No. 13, by Hai). One responsum speaks of partners that lived apart a distance of two months' journey (ח"ג, No. 42, by R. Naḥshon, 874-82). In particular there must have been a brisk interchange of goods between the North African ports and the Spanish coast towns (see נמו"מ No. 19 by R. Şemah; partners, one living in Kairovan and the other in Spain; ח"ג, No. 59, to Kābes; תש"ר, II, 31, No. 9 = ג"ה, No. 37, question came from Tlemsen). Probably R. Naḥshon's responsum in ח"ג, No. 49, refers also to Spain. It speaks of a Jew who came to Ifrikiya and entered there into partnership with another

<sup>243</sup> ח"ג, No. 81: בני אדם שיצאו מאצל נשותיהן אם ברשות נשותיהן . . . אבל אם יצאו שלא ברשותן ב"ד אין ב"ד רשאים למחות בהן . . . אצל רשאים למחות בהן ולגזור עליהן לחזור לבתיהן וכל שכן כדנפקין לסחירה רשאים למחות בהן ולגזור עליהן לחזור לבתיהן וכל שכן כדנפקין לסחירה דמתרינן בהו לחזור. See also ש"צ, 9 b, No. 2: a Jew, who was betrothed to a woman, left for abroad where he was held up and forced to sign a document of divorce. Probably this refers to the Bêt-Din there who forced him to divorce his betrothed because he left her. Cp. further, ג"ה, No. 163: מי שבקש לפרוש בים הגדול ואמרה לו אשתו איני מניחך עד: No. 163: שתכתוב לי נט לזמן קבוע שאם חס ושלום לא תבוא אותו הזמן . . . אתגרש . . .

Jew, and then he left for abroad (לְעֵבֶר הַיָּם), where he traded with the goods from town to town. Another responsum (גְּמוּ"מ, No. 192) speaks of a Jew who left Spain for some Christian country for business purposes and stayed there for six years (cp. also גְּמוּ"מ, No. 224; ש"צ, 93 a, No. 1; ג"ק, No. 51). On these journeys Jews frequently encountered dangers on account of robbers and brigands, and had to give up all their money in order to save their lives.<sup>244</sup> Various must have been the experiences of such Jewish travellers; frequently they were exposed to chicanery on the part of the various authorities of the many towns and municipalities through which they passed, and this constant struggling of the Jew with the circumstances around him made him versatile and able to help himself in every emergency. Responsa containing the legal decisions of the Geonim about monetary disputes amongst Jews are only a reflex of real life; the preponderant part of commercial dealings amongst people are settled without the necessity of bringing them before the courts. Yet even so, some responsa preserved read like fragments of the history of the time of their composition. In addition to the responsa discussed above (pp. 131–3) two interesting responsa will serve as examples of the vicissitudes Jewish

<sup>244</sup> Cp. ג"ה, No. 426 from Tlemsen; *Geon.*, II, 150 (תק"ב); ג"ו, No. 7 and ג"ז, No. 94: these responsa deal with the dangers that were lurking on the road to Egypt; גְּמוּ"מ, No. 213: Jews while travelling were captured by Arabs who brought them to Spain, where they were redeemed by their co-religionists; ג"ק, No. 66 by R. Meshullam; ח"ו, No. 27 by R. Šemah; ג"ו, No. 41. Cp. further, Bodl. 2876<sup>31</sup>, containing an undated letter, in Arabic, from יִצְחָק בֶּר אַבְרָהָם חַלְפָן הַלֵּוִי. He went from אֲלַאֲנְדָלֻס (Andalusia) to Alexandria on business.—A Cambridge fragment (published by Dr. Hirschfeld, *JQR.*, XVI, 573 ff.) tells us of a family from Ḳabes whose members lived in Sicily, Marseilles, Ḳairowan, Tripoli, Alexandria, Fustāt, and 'Akko.



merchants passed through on their journeys. One responsum in נמו"מ, No. 216, tells us how *B* used to travel to maritime countries and *A* would be his assistant in transporting the goods. Once they agreed to share the profits of a certain kind of goods, and they travelled together because they were acquainted with the authorities of the route they took. On the way, while staying in a certain town, *A* had a mishap and had to bribe an official. At the port of embarkation they had to leave their money, which was confiscated by the authorities. When they arrived at the port of destination, *B* had to go back for the money which he could obtain only after bribing the officials.<sup>245</sup> The other responsum in ש"צ, 93 a, No. 1, tells us how *A*, after having concluded a partnership with *B*, left for a maritime country where he traded for several years with much success. Wanting to return home at last, he took a boat with other Jews, but this soon foundered in a storm, and the passengers had to escape half-naked to the shore of the sea, leaving all their fortune behind. There this Jew *A* carried on business (to his discredit even

<sup>245</sup> The responsum, which is fragmentary and obscure, runs as follows :  
 שמעון שהיה רגיל לילך למדינת הים וראובן היה מתקן סחורתו לילך  
 לאותו מקום וכאשר ידע דעת שמעון התנה עמו ליתן לו כל הריח שיודמן  
 לו המקום בקניית ל' דינר בפרקמטיא שלו במין שקנאה עבור שילם ויבואו  
 שניהם ירודין לפי שהיו מכירים שרי אותו דרך ויאותו זה עם זה ובהתחזקם  
 בדרך נודמן לראובן סכנה בעיר אחת ובלא דעת שמעון נדר ה' דינר לשר  
 אחד שילום באותה סכנה ובבואם לעיר אחת שהיתה על שפת הים הניחו  
 שם ממונם והלכו למדינת הים ובהיותם שם נתעצו לילך עבור ממונם  
 וראובן לא מלאהו לבו ללכת מפני הסכנה ואמר לשמעון לך ועשה מה  
 שתוכל והלך שמעון ומצא הממון בעין יפה ומוכס . . . . . אותה מדינה  
 כל המכס שמניע לי על ממון נתון לך עבור דורנות וכבוד שעשית לי . . .  
 It seems that they had to pay customs for coins that were exported from the  
 country to a foreign state.

with blackmail), was successful, then lost his money, and then was again successful. Such responsa give us an inkling of the extensive trade carried on by Jews in that period.

Of great furtherance for the expansion of the Jewish trade must have been the solidarity that existed among Jews all over the diaspora. Jewish business men could always find in the various communities of all the different countries friends among their brethren who could supply them with information about markets and other business concerns. Further, a Jew from whatever country when trading with his co-religionist would always find protection and redress at the hands of the Bêt-Din or of the communal leaders of the different communities he visited on his travels far and wide. The Talmudic law by which the Jews of the Gaonic period were guided in all their affairs knows no difference between Jews of different countries; every Israelite is entitled to the same right. In a responsum (נמו"כ, No. 195, end) the Rabbi indignantly writes: 'If a stranger comes to a town do we deprive him of his money? Far be it from that! Such a thing shall never be in Israel!' <sup>246</sup> In addition, the fact that generally, with small exceptions, the Jews of that period could write and thus transmit their thoughts in writing, must have contributed much to the development of the Jewish trade. The religious duty of teaching every Jew the Law was practised from times of yore, and this had the result that almost every Jew could read Hebrew script. Thus in a responsum (נ"ה, No. 231, p. 109) the Gaon states that 'as a rule a Jew knows the Hebrew script' (אבל חזקת ישראל ידיעין כתב עברי). From being

<sup>246</sup> אבסנאי שבא לעיר מקפחין אותו ואת ממונו? חלילה! לא תהיה!  
ולא תעשה כזאת בישראל!

able to read to the ability of writing down the same letters is only a small step, and probably the large majority of Jews could write in the Hebrew script. Thus whatever vernaculars the Jews of the different countries might have spoken, be it Arabic or French, they could express their thoughts in their own language by means of the Hebrew script. That the Jews wrote Arabic in Hebrew script is well known. This was the case with the Jews of Arabia even in pre-Muhammedan times (cp. Gr., V<sup>4</sup>, 77 f.). There exist also a large number of responsa, both by earlier as well as by later Geonim, written originally in Arabic in the Hebrew script (cp. e.g. ג"ה, pp. 305-18, 339-41). Accordingly business correspondence could be carried on quite easily, and the other activities pertaining to clerkship performed in a time when the preponderant majority of non-Jews were analphabets. Several responsa tell us of proper business accounts kept in writing and of correspondence going on between partners who lived apart in different places. This must have been quite the general custom amongst Jewish traders. A responsum (ש"צ, 74 b, No. 13, probably by Saadya) tells us of a Jew who died and his heirs produce ledgers and accounts and have them audited by reliable Jewish merchants. They ask now their opponent to produce counter-accounts 'in accordance with the usage of business men' (ולהוציא האמת לאמתו כמנהג הסוחרים) (בפני הנרים).<sup>247</sup>

<sup>247</sup> See further, ג"ה, No. 59 = *Geon.*, II, 284 (written in 1015 to Ḳabes, cp. ג"ה, p. 32, note 1): two partners who lived in different countries would carry on their business by means of correspondence ( . . . כיון שהיו ראובן ושמעון נושאים ונותנים באיגרות שכותבין זה אל זה ומנהגם היה שכתביהם . . . ראובן אל שמעון לתת דבר יתן שמעון ככתבו . . . ; see especially the continuation of this responsum from a Bodl. MS. (in *JQR.*, VI, 24): . . . והרי ספר חשבונות של אבי מוצי ויש לו עליך הוצאה וחשבון . . .

All these factors enabled the Jew to travel far and wide in his business enterprises and to maintain commercial relations with the remotest countries. Thus we can understand how Jewish business men could travel from the country of the Franks to China as the well-informed Arabic geographer, Ibn-Kordadbeh, in the middle of the ninth century reports (see above, p. 146). Jewish merchants, Ibn-Kordadbeh writes, called Radanites,<sup>248</sup> who speak Persian, Rumish (Byzantine Greek), Arabic, Spanish, and Sicilian (Italian) would travel from the land of the Franks by boat to Egypt, where they landed at Farama, loaded their goods on animals, and would travel for five days to Kulzum (Suez). Once arrived there, they took the boat again and travelled along the Red Sea, stopping at al-Jar, the port of Medina, and at Jidda, the port of Mecca, till they reached the Indian Ocean. Another route these merchants chose was to land at the estuary of the Orontes and travel via Antioch, Aleppo, to the Euphrates, and then downwards this stream to Bagdad, whence they would pass on through a canal to the Tigris, Persian Gulf, and the Indian Ocean. Their ultimate goal would be the estuaries of the Indus, and the coasts of India and China. On their return they used to take the same route. But some of these merchants would go to Constantinople to dispose of their goods while others went directly back to the land of the Franks. When they preferred a land-route to a trip over the Mediterranean, they would travel

ג"ה, Nos. 5 and 423; *Geon.*, II, 151, l. 2 ff.; *ibid.*, תק"ה; ג"ק, No. 146, by R. Meshullam; גמ"מ, No. 4 = ג"ל, No. 5; גמ"מ, No. 2; ג"מ, No. 32

<sup>248</sup> Perhaps these Jews were from the district of the Rhône, so that their proper name would be 'Rhodanici' (see Eppenstein in Gr. V<sup>4</sup>, 556, note to p. 203).

in caravans along France, Spain, Gibraltar, the whole of North Africa, Syria, Babylon, the southern provinces of Persia, Farsistan, and Kerman, and thence to India and China.<sup>249</sup> Some merchants would take their way via Germany, the Slav countries to the town of the Chazars, Itil (above the estuary of the Volga), then traverse the Caspian Sea, reach Balk, Transoxania, and the countries of Tagazgaz. These Jewish merchants would bring from the Occident to the Orient eunuchs, slaves, both male and female, silk, swords, and furs. Whereas from the Orient they would return with musk, aloë, camphor, cinnamon, and the like products. This remarkable report of Ibn-Kordadbeh throws much light on the commercial activities of the West-European Jews of those times, and shows what spirit of enterprise they possessed to undertake such journeys from the Frankish Empire to China, journeys which must have taken them years to accomplish.

Many of the goods mentioned in this report in which the Jews traded are also mentioned in the Gaonic responsa. In France we find Jewish women making expensive gloves, embroidered with gold, and similar expensive garments. When these were sold the money was invested in expensive furs (פ"ג, No. 66, by R. Meshullam). Likewise Jews traded in silk wares (ברמון, פ"ג, No. 150, cp. Rapoport, *Introd.* to פ"ג, 7 b). In the time of R. Meshullam money-lending began to be a favourite occupation of the Jews in France (cp. פ"ג, No. 141). In spite of all the prohibitions of the Church Councils we find a Jew in the service of the Bishop of Narbonne acting as his banker and the administrator of

<sup>249</sup> The responsum of Sherira quoted above in note 242 probably refers to these long caravan journeys.

his financial concerns.<sup>250</sup> We learn further of a Jewish banker in the service of the Duke of Anjou. When the latter captured the Duke of Aquitania and received a large ransom for his release, he ordered his Jewish banker to carry out the required transaction of money-exchange.<sup>251</sup>

In money-lending a special kind of business developed amongst the Jews in France and Spain, called מערפא <sup>252</sup> (cp. ג"ק, No. 151 a, 49; גמ"מ, No. 174). Jewish bankers would each have a number of Gentile clients whom they advanced all the money they required. The Bêt-Din prohibited any Jew from taking away a client belonging to another

ראובן שתובע את שמעון מדבר ההגמוניא שבנרבנא. <sup>250</sup> ג"ק, No. 140: . . . אם נשחקר בעיסקי ההגמון בקניית צרכיו או אם נטל שום שכר מגוים מעסקים שלו או הלוח ממון ברבית ונהנה בו או חילוף כספו וזהו ביוקר . . . העמידו בזה או אם חילף מאונו כסף וזהב בזה וזה עמידו ביוקר . . . This defines the scope of the transactions carried out by this banker of the bishop. הגמון (originally ḡḡamōn, leader) was the Hebrew expression in those times for a bishop.

. . . כשנתפס דוכוס של צרפת ביד שלטון עירנו <sup>251</sup> גמ"מ, No. 152: קבל השלטון ממנו רוב ממון בפדיונו וצוה לו (ל' ר.) השלטון בשביל שהייתי . . . טרוד באומנותו לקבל אותו מזון . . . This event probably refers to the capture of either William VI, Duke of Aquitania, by Geoffrey of Anjou in 1037, or of his son, William VII, by the same in 1045, when Tours was taken (see Müller, note 4).

<sup>252</sup> מערפא seems to me to be connected with the Syriac ܡܥܪܦܐ, a money-changer, cp. Pesh. Mark 11. 15: ܡܥܪܦܐ ܕܡܢܐ. See Rapoport, Introd. to ג"ק, 7 b, § 16, but מערפא is never mentioned by Babylonian Geonim, only by Spanish and French scholars (see also Müller, XXXVII). תשובות נאוני צרפת ולותיר, pp. 2-3, תשובות ר' קלונימוס רגמ"ה also uses this expression (see *REJ.*, LVII, 198). Rapoport connects this word with the Arabic عَرَفَ, to be acquainted with, or to define, but this gives no proper meaning.—The nature of מערפא is explained in ואותן הלואות שמלויים לעבדומו ויש לו לישראל גוי: 28, ב"מ, III, א"ז מערפא שלו שרגיל תדיר ללוות ממנו אסור לו לישראל אחר להרגילו אצלו ולסלקו מישראל הרגיל אצלו שהרי יכול להלוות לגוי אחר דהרבה גוים לוין שביחי. . . See also רבא"ן, No. 104.

Jew's firm. Sometimes this prohibition was strengthened by a ban (cp. גמ"מ, No. 174 ; ועוד שנתנו חרם בבית הקברות (?) ; שלא יכנוס איש במעריפה של אותן האהין, see Müller, note 6). Above (p. 317) we have seen that many Jews in France and Spain possessed vineyards. As a result many Jews were wine merchants. Already Agobard, the notorious Bishop of Lyons, attacked the Jews on the ground that they sold adulterated wine (about 829 C. E., cp. Gr., V<sup>4</sup>, 241). The responsa also refer to this wine-business in the hands of Jews (cp. גמ"מ, Nos. 155 and 205).

Coming back to the responsa of the Babylonian Geonim, we find references to several trades practised by Jews in Babylon and in the North-African communities. R. Natronai in a responsum (ח"ג, No. 82) makes mention of Jews who traded in expensive clothes and in bullion (בגדי צמר ארנבים) (או בגדים מעולים או זהב). In another responsum (גמ"מ, No. 149, by R. Paltoi) it is stated : 'Germans (?) usually come to us with goods mostly in the summer and rarely in the winter. Usually they would bargain over our cloths and depreciate their value. But when they hear of another caravan coming behind them, or if they have suddenly to depart, they would hurriedly sell and buy all the required goods.' Further, large business used to be carried on in silk-wares. Saadya in a responsum (ג"ה, No. 556) mentions two partners investing large sums of money in silk (תורתא) (ראברישום, cp. ג"ה, p. 277, note 2). One partner contributed about a thousand gold Dinars (a Dinar = about 30s.), a large sum in those days (see also גמ"מ, No. 135, from Tlemsen).<sup>253</sup> From Kairovan a business transaction is

<sup>253</sup> About the silk trade see also above, p. 328, and further, *Geon.*, II, 65 : (ק"ה) ראוּבֵן שִׁינָר עַם שְׁמִי מִשֵּׁי מֵאֵי סִיקְלִיָּה : Brit. Mus. Add. 27,181 (cp. above, note 7), fol. 16 a (No. 61) : עַל בְּנֵי אֲדָם :

reported of a Jew selling to another Jew a large quantity of pepper on board ship (קהלת שלמה, ed. Wertheimer, 71 a, 'א). We find further casual references to trading in wheat, animals, and property (ש"צ, 77 b and 78 a, Nos. 3-5, by R. Nahshon). Several responsa deal with cases of Jews buying bullion which they used to give to the mint to be coined. In those times no standard and uniform coinage existed. For example, the various provinces of the Muslim Empire had different standards. The Dinar of Yemen was much inferior in value to the Dinar of 'Irâk. This brought about exchange-business in the coins of the different countries.<sup>254</sup> In an Arabic question to Sherira there is mentioned the case of a Jew who possessed a grindstone for grinding the dust of gold and silver (ג"ה, Nos. 370-1).

Many responsa referred to above show that very close business relations existed between Jews and non-Jews. Especially in such undertakings as mills, inns, public baths, and landed property which required to be carried on also on the Sabbath, Jews would enter into partnership with

שהיו רגילין לקנות תותים ועלי שאר אילנות לצורך משי היש תקנה לדבר שלא יוכל המוכר לטעון עליהם אין אדם מקנה דבר שלא בא לעולם וכו'.

<sup>254</sup> Cp. ג"ה, Nos. 386 and 424 (written in Arabic, translated by Harkavy into Hebrew, ג"ה, p. 316 ff.); ש"צ, 34 a, No. 4, by Sar Shalom (cp. *Einleit.*, 14, note): A bought gold in bullion from B, the banker, on a month's credit; ש"צ, 34 a, No. 3 = ג"ה, No. 52: the Gaon Sar Shalom is against those who lend defective coins and ask in return coins of full weight, lend silver in bullion and ask back coined silver, because this is usury; ג"מ, No. 165: a Jew possessing silver in bullion and being afraid that the coinage at the mint would be delayed, asks another Jew who was held in great honour by the master of the mint to give the bullion to the mint in his name.—Mubaddasi (born at Jerusalem in 946, began his work in 985) writes: 'In the province of Syria also, for the most part, the assayers of coin, the dyers, bankers and tanners are Jews, while it is most usual for the physicians and the scribes to be Christians' (cited by Le Strange, *Palestine under the Moslems*, 22).



non-Jews who could thus conduct the business on the Jewish festivals (cp. גמ"מ, Nos. 53 and 55; חש"ר, II, 57, No. 5; *Geon.*, II, 186, 3; 194, l. 9 ff.; 195 top and bottom; 196, l. 11 ff.; ה"פ, No. 10). Other cases of Jews forwarding money to non-Jews for business purposes are mentioned in the responsa ג"ל, Nos. 67 and 68. All this will show that the prohibition of R. Sar Shalom (849-53) that no Jew should enter into partnership with a non-Jew (גמ"מ, No. 102, ואסור לישאל שיעשה שותפות עם הגוי, 102, 102) was never carried out in actual life. The responsa of the Spanish and French scholars referred to above (pp. 318-19, 328-9) prove that at the close of the Gaonic period the Jews in France occupied themselves more and more with money-lending to non-Jews on interest; no permission was any longer required for taking interest from a non-Jew. Characteristic is the question in ש"צ, 35 b, No. 7 (anonymous) from some correspondent, whether a Jew who takes interest from a non-Jew should be excommunicated. This shows that in the place of that correspondent money-lending was quite unusual, but from the responsum it is impossible to gather whence it was sent. From the responsa we learn further of various combinations of partnerships, especially in cases where one partner was the capitalist and the other the salesman. Saadya, in a responsum (ש"צ, 96 b, No. 12) mentions a typical example of such a partnership. Two Jews invested 5,000 Dinars, a large sum of money in those days, in a banking business and in the sale of property, the proportion of the money invested by the two partners being 6 to 4, but since the second partner was the active business man the profits were fixed in the proportion of 5 to 7.<sup>255</sup> Reference is also made in a responsum to the

<sup>255</sup> Cp. further ש"צ, 93 b, Nos. 2 and 5 (by Sherira); No. 3, by Natronai;

way poor Jewish pedlars used to carry on their barter trade in the small towns and villages (probably in North Africa). They used to obtain loans from well-to-do Jews which enabled them to buy cheap crockery, flax, wool, and spices. These they would barter for wheat, barley, wax, and other articles. When advancing the money, the creditors would fix with the pedlars the prices of wheat and the other articles which the latter would bring them later on in payment of their debts. At times it would happen that the prices of these articles would rise before the money was due, so that it amounted to usury on the part of the lenders.<sup>256</sup>

All these casual and scattered references in the Gaonic responsa to the occupations and the economic position of the Jews which were discussed in this chapter, are only the reflex of the actual conditions. Only when disputes arose were they brought to the notice of the Geonim, who were asked to give their legal decision in accordance with the Talmudic civil law. But even these casual references in the responsa allow us to form an idea of the extent and the way Jews took part both in agriculture and trade in the countries of their diaspora. In conclusion of this chapter, mention is made of the interesting responsum in Arabic

גמ"מ, No. 90, by Saadya; ג"ה, No. 235, from Kairovan; ג"ג, No. 43; ש"צ, 98 b, No. 21, by Saadya, translated from the Arabic. See also ש"צ, 96 a, No. 11 by Saadya: two Jewish partners travel twice by ship with goods to בבל, which probably refers to Bagdad.

<sup>256</sup> *Geon.*, II, 80-81: סוחרים מחזרין בעירות ובכפרים ומוכרין גרוטאות: ופשתן וצמר ובשמים ומקבצין חטין ושעורים ושעור ושאור דברים ונוטלין ממונ מבע"ב על שעור ועל חטין ושעורים ופוסקין עמהם כך וכך קפויזים בדינר ונוטלין מאון וקונן מקח זה ומוכרין להן ומרווחין. Cp. also ג"מ, No. 120.

concerning money-orders from one country to another.<sup>257</sup> The Gaon maintains that according to the principles of the Talmudic civil law no legal claim can be brought forward should money sent in this way be lost in transmission. However, the Bêt-Din began to deal with such claims because they saw that many people sent such money-orders, and the Bêt-Din did not want to place obstacles in the way of commercial relations between people.

כך ראינו : 257 ג"ה, No. 423 (Hebrew translation by Harkavy on p. 316): שאין בשרשי הדינים שלנו [להתיר] לשלוח הספתנה . . . אבל בשביל שראינו שהבריות משתמשין בה התחלנו לדון על פיה כדי שלא יתבטלו . . . המסחרים בין האנשים וקבלנו לדון בה כמשפט התגרים . . .

#### IV. THE POWER OF THE BÊT-DIN AND THE ORGANIZATION OF THE COMMUNITIES.

1. IN the preceding chapters we have seen how the spiritual leaders of Jewry greatly opposed the practice of Jews submitting their disputes to the decision of non-Jewish courts. On the whole it may be assumed that the bulk of the people followed the injunction of their spiritual leaders, and preferred to settle their cases before Jewish judges; both on religious and political grounds, the procedure of the secular courts found no favour in the eyes of the Jews. We have also discussed the occupations of the Jews, and have seen to what extent the Jews of those times occupied themselves both with agriculture and commerce. Thus for the common welfare of the Jewish communities there was a real need of an efficient Bêt-Din. The Jewish judges usually worked hand in hand with the elders of the community (זקני העיר), who, as we have seen above, were responsible for the taxes. Whenever the Bêt-Din or the communal leaders found that their ruling was flouted or disobeyed by their co-religionists, they used to avail themselves of the power of coercion with which the secular authorities were invested. But the secular authorities could lend their assistance in monetary disputes only (see above, p. 142 ff.). In religious affairs, however, and on the whole the only coercive means at the disposal of the Bêt-Din was the ban. It is true that

flogging (מלקות) was the punishment inflicted by the Jewish courts for several transgressions. But if a Jew refused to undergo this punishment, he could only be coerced by means of excommunication (cp. also above, p. 129, note 192). It is no wonder therefore that the Geonim were anxious to make this only means of coercion as effective as possible. The welfare of the communities, both as regards morality and honest dealing, demanded that the ban should effectively take the place of imprisonment, and the other ways of coercion at the disposal of the non-Jewish courts. It must be admitted that the ban was a little too freely made use of, especially in the case of small transgressions in religious matters (to a great extent due to the opposition against the Ḳaraites). Moreover, the Exilarchs frequently handled this social weapon for their own purposes, either to extort taxes or to impose their will on the Geonim (as the quarrel between David b. Zakkai and Saadya shows). Yet a strict enforcement of the ban was on the whole necessary when we review in general the great responsibilities that rested on the Bêt-Din to ensure the peace and the good name of the Jewish communities. We find that the spiritual head of the Christians in Babylon, the Catholicos, could enforce his will on his co-religionists only by means of excommunication from the Church, refusal of sacraments, and prohibition of intercourse with Christians, just in the same way as the Bêt-Din enforced its ruling. The legal decisions of the Catholici Henânîshô (686-701), Timotheos (780-823), and Jesubarnum (820-4) (published by Sachau, *Syrische Rechtsbücher*, vol. II), show us several parallels between the methods of the Catholici and their subordinate local ecclesiastical courts on one hand, and of the Geonim and the local Jewish courts on

the other, in enforcing their ruling on their respective co-religionists. (See, e. g. *Henânishô*, Nos. 5, 8, 9, 11, 12: the ban was announced in the churches of the respective district on festivals; 14: the coercion is to be carried out also with the help of the secular authorities, in case the ecclesiastical authority is disobeyed; 25; *Timotheos*, §§ 9, 13–14; *Jesubarnum*, §§ 34, 36–9, 65–6, 115, and 125.)

2. The chief source of information about the organization of the Jewish courts in Babylon is to be found in Nathan's report (*Neub.*, II, 85–6). The responsa supply several supplementary details. In Babylon the exilarchs were entitled to appoint judges for the communities that were within their sphere of influence. The Geonim also undoubtedly possessed the same right in the districts under the jurisdiction of their respective academies (see *Neub.*, II, 81 and 82, beginning, and 86, and also Aptowitzer, *ƳQR.*, N. S., IV, 31).<sup>258</sup> The diploma given to such judges is preserved in a Gaonic responsum, according to which they were invested with the authority of settling legal disputes and of supervising the practice of all ritual commandments, religious laws, and moral conduct.<sup>259</sup> Such

<sup>258</sup> It is of interest to learn that Saadya's rival to the Gaonate of Sura, Khalaf b. Sarjado, could appoint his nominee as Dayan of the distant community of Mossul (see Harkavy, *Studien u. Mitteilungen*, V, 207, ll. 9–11: ופני עכבר יומי בה אלי אפרים [בן] שטיא אלדי קד נצבה כלף בן (סרנאדו דיאן אלמוצל).

<sup>259</sup> *ג*, No. 180 (probably by Hai to Kairowan, written in 1011, see *ibid.*, 76, note 4): כי המנהג בבבל שבי"ד הגדול הן ממנין דיאנין בכל: פלך ופלך וכותבין לו לדיאן אגרת רשות וקוראין אותו בלשון ארמית פתקא דדיאנותא וכן מפרשין 'דאנחנא מניניה לפלוני בר פלוני דיאנא בארתא פלוני ויהיבנא ליה רשותא למידן דיני ולאיתחזא על כל מילי דמצואתא ודיאסורא והתירא ודחלית שמיא, וכל מאן דלא מקבל דינא על נפשיה אית ליה רשותא למעבד ביה מאי דחוי כי היכדין דחייב מן שמיא' (See also *פ*"ה, No. 156, and *ש*"ת, No. 217).

a judge, on his arrival at his new place of activity, had to select two assessors from amongst the respected members of the community, in the first instance in order to constitute a proper Bêt-Din which had to consist of at least three members, but chiefly for the purpose of being informed of the affairs of the community by members of long standing. The elders of the communities would supervise the activities of the respective judges, and could demand from the Exilarch, or the Geonim respectively, the deposal of unworthy judges. The Exilarch had a high-court situated at his place of residence, which, as we have seen above (VII, 469), was Bagdad since the times of Mansûr. This high-court, or באבא דמרותא, is mentioned in כתב פסיק דינא דאיתפסיק בבאבא דמרותא דור : ג"ה, No. 555 : ראש גלותא . . . דכתבא דנן חייט ומלפף ביה נפק לקדמנא לבאבא דמתיבתא לבית דינא דמרנא ורבנא סעדיה. If the Exilarch happened to be a scholar, it is only natural that he would preside over the high-court. Thus in ג"ה, No. 555, we find the expression that "the Exilarch (David b. Zakkai) gave judgement based on substantial Halakot and clear arguments' (ופסק ראש גלותא נטריה רחמנא דינא מן הלכאחא גבאראתא) (ומעמי ברירי).<sup>260</sup> But since most of the Exilarchs were not learned and owed their exalted position merely to their descent from the Davidic family, they usually had a prominent scholar presiding over their High Court. We possess a responsum by a president of this High Court, R. Şemah, sent to Kairawan.<sup>261</sup> He must have attained

<sup>260</sup> About the learned Exilarch Solomon b. Hisdai, see Halevy, דורות הראשונים, III, 213-14.

<sup>261</sup> Dukes in חנניא, IV, 141-2 prints from an Oxford MS. : זה טופס : התשובה שחשיב רב צמה ריש דייני דבבא דמרוואתה חסדאי ריש גלותא בריה דמרוואתה נטרונאי ריש גלותא לרבנא נתן בריה דרבנא חנניה לכל

considerable reputation that such a distant community asked for his opinion in religious matters. Probably the local judges in the communities under the Exilarch's jurisdiction consulted the High Court in difficult cases. Moreover, one of the parties concerned in a lawsuit could refuse to submit to the decision of the local judge and demand that the dispute should be settled by the High Court. From a Gaonic Document, published by Aptowitzer, *ƧQR.*, N. S., IV, 25, No. 1,<sup>262</sup> we know that this was the case as regards the High Courts of the Academies. In all probability the same procedure was in force at the Exilarch's High Court. The High Court of each of the two Academies was also presided over by an eminent scholar, the so-called *רב בית דין* or *רבבא* (see Ginzberg, *Geon.*, I, 11, note 4; Aptowitzer, *ibid.*, 35–8). This president of the High Court of the Academy was second in rank to the Gaon, the supreme authority (but see above, VII, 468 ff.). It appears that the decisions rendered by the Exilarch's High Court had to be ratified by the High Courts of both Academies, as the responsum in *ג"ה*, No. 555, quoted above, p. 338, clearly shows. Moreover, it is well known that the quarrel between David b. Zakkai and Saadya arose because the latter refused to ratify a docu-

תלמידים חכמים וזקנים ושאר אחים הררים בקירואן במדינת אפריקא. See also *ג"ה*, p. 389. This R. Šemah seems to have been identical with the *רבבא דינא* mentioned by R. 'Amram at the beginning of his Siddur (cp. *ג"ל*, No. 56). In *ש"צ* 3 a, No. 17, there is mentioned *מר רב חנינאי*, who after the death of Bustanai issued a deed of freedom to the exilarch's widow, the daughter of the Persian king Khusrau, in order that her children, the sons of Bustanai, should be in the status of freedmen. Cp. Eppenstein, *Monatsschrift*, 1908, 336–7.

. . . עיינו במילי דבין פל תובע לפל נתבע וטרחו בקצתהון עד <sup>262</sup> דסלקין לשלמא, אי דסלקי לשלמא מוטב ואי לא איקבעוהי וימנא לפל דסלקין לשלמא, אי דסלקי לשלמא מוטב ואי לא איקבעוהי וימנא לפל. נתבע דייתי וישמע קדמנא בבבא דמתבתא Cp., *ibid.*, p. 32.



ment issued by the former's High Court, whereas Kohen Šedek complied with the request of the Exilarch (see Nathan's report in Neub., II, 80-81).

In Babylon the judge of a community had fixed emoluments from every member of his community above the age of twenty, and he also took fees for all legal documents which none but his scribe was allowed to draw up (Nathan in Neub., II, 85-6). As regards the communities outside Babylon, we may assume that in Egypt the Nagid generally had the power of appointing judges over the communities under his jurisdiction. But in other countries each community used to elect a judge of its own accord. We find references to communities that possessed no permanent Bêt-Din. In such cases the elders of the community used to settle by arbitration disputes arising amongst Jews. Thus the responsum in ש"ז, 84 b, No. 4, speaks of a community which has no permanent Bêt-Din, but where the elders, the disciples, and the respected members of the congregation 'settle all disputes arising amongst the Jews'.<sup>263</sup> Likewise in ש"ז, 90 a, No. 29, the Gaon mentions 'the people that are fit to settle disputes amongst the members of a community that has no permanent Bêt-Din' (האנשים שמוכנים). (לשפוט בין העם במקום שאין בי"ד ממונה). On the other hand, several responsa refer to communities with permanent courts (cp. ג"ה, No. 180 and ש"ז, 90 b, No. 33). The Geonim were careful in recognizing the authority of such judges

<sup>263</sup> במקום שאין דיין קבוע ויש מישראל מי שיש לו אצל חבירו הלואה או פקדון או ירושה ותפשו לפני הזקנים והתלמידים וטובי העיר והייבו . . . ואי . . . ג"ה, No. 233. Cp. also ש"ז, 90 b, No. 33. אותו שיתן לו מה שיש עליו מן הדין . . . ליכא בי דינא ולא תלמידי חכמים אע"ג דאיתבררא מילתא גבי זקנים . . . חשובים.

who had not their authorization in communities abroad. R. Hai was consulted by his correspondents in Ḳairowan as to the case of a Jew who swore not to attend at the local Bêt-Din, though the members of the community established a permanent Bêt-Din, and undertook to submit all their disputes to its decision. The Gaon in his answer draws the distinction between a judge appointed by the High Court of the Academy and one that had no such authorization. In the case of the former, any person that pronounced such an oath would be forced to appear before the Bêt-Din and would be flogged (מלקוה) for his oath. Whereas in the case of the latter, such a procedure cannot be enforced (ג"ה, No. 180). From some community there came the complaint to R. Hai about the scandalous procedure of the local judges who would allow the beds of the poor, as well as their other belongings, to be taken as pledges, in contradiction to the Talmudic law (ש"ח, No. 86). The Gaon rightly gives vent to his indignation at such proceedings, and strongly urges upon his correspondents to do everything in their power in order to bring about the deposal of such judges. This can only refer to some community outside Babylon, since in Babylon the High Court of the Academy had the authority to remove such judges. All that the Geonim demand of such courts in countries outside Babylon is that they should be eminent and command the respect of everybody (see the definition of חשוב in ג"ה, No. 240, and cp. ג"ה, No. 14 = No. 255, end). Each community probably provided from the public funds for the maintenance of its Bêt-Din. A responsum in ג"ה, No. 82, mentions the case of a Jew who bequeathed the rental of his house for the use of the synagogue. The communal leaders, however, used the

rent for the salary of the judge of their community (למי שמתעסק בדיניהם שאין לו ממה שיתפרנס, see also נ"מ, No. 7).

3. On the whole, the Talmudic law was the guide of the Jewish judges in their dispensation of justice. For religious transgressions, flagellation in various degrees was inflicted, whereas in monetary lawsuits oaths would be administered. But in order to enforce its ruling, the Bêt-Din in the Gaonic times, as well as long afterwards, had only one means at its disposal, and that was the ban. All this was in use in Talmudic times. From the Gaonic responsa, however, we obtain a detailed account of the procedure of the Bêt-Din.

(a) *Corporal Punishment.* There were two grades of flagellation, the so-called מלקות for transgressions against Biblical commandments, and מכת מרדות for acting contrary to the prohibitions of the Rabbis (ש"ח, No. 9). The former, as is well known, consisted of thirty-nine stripes. But there are conflicting statements as regards the latter. R. Natronai states in a responsum (ש"צ, 91 b, No. 39 = ה"פ, No. 89; cp. ש"ח, No. 181) that the so-called flagellation of מלקות was no longer practised in his time, whereas the מכת מרדות had no fixed number of stripes, but was continued till the person concerned submitted to the decision of the Bêt-Din.<sup>264</sup> But from responsa by Sherira and Hai it is evident that flagellation, consisting of thirty-nine stripes, was in practice still in their time (see ג"ה, No. 440 (sent

<sup>264</sup> ומלקות דאורייתא לא נהגא היום אלא מכת מרדות, ומכת תורה מ' חסר א', ומכת מרדות אינה כן אלא חובטין אותו עד שיקבל או עד שתצא נפשו. In this connexion cp. the statement of Samuel ha-Nagid in a responsum (quoted in ספר העתים, ed. Schorr, 267) concerning people who were suspected of heresy and whom the early Spanish authorities had flogged: וקדמונינו הלכו מהן אנשים שאמרו למלקות ומתו מתוך הלקאה.

to Ẕairowan in 997; cp. *ibid.*, p. 235, note 2) = חש"ר, II, 41, No. 6). It seems that this punishment was inflicted for transgressions that could not be repaired, e. g. desecration of the Sabbath. Whereas for the purpose of enforcing the ruling of the Bêt-Din, the flagellation went on till the culprit acquiesced. However, מכת מרדות בלא חשבון is mentioned by R. Yehudai (760-4) for transgressions that could not be repaired (cp. חש"ר, I, 29, and II, 18; see also ש"ת, No. 15, and *Einleit.*, 20, note).<sup>265</sup> During the flagellation corresponding verses from the Bible were recited, and the culprit had to make confession and ask for divine forgiveness (ג"ה, No. 440 = חש"ר, II, 41, No. 6). It seems also that the culprit was adjured not to repeat his sin (ש"ת, No. 7, and the responsum quoted by Müller, *Einleit.*, 6, note 4).

<sup>265</sup> Quite a new distinction between מלקות and מכת מרדות is introduced in מ' בשר ע"ג נחלים ( *Jahrb. d. Jüd.-Liter. Gesellschaft*, Frankfurt, V, Hebrew part, p. 67, No. 20): מלקות זה מלקות מ' שלוקין השוגגין והמתחרטין, מכת מרדות בלי חשבון למזיד, מתשובות ראשי ישיבות בבל וירושלם. As the responsa of the Babylonian Geonim, which we have discussed, do not know of this distinction, the above summary rather represents the views of the Palestinian Geonim than those of the Babylonian scholars. J. N. Epstein (in *Jahrbuch*, vol. VIII, 450) could not find what was 'obscure' in the summary of מ' בשר ע"ג נחלים. But his references to 'similar' responsa by Natronai and Hai (ש"צ, V, 7 (91 b) No. 39, and ש"ת, No. 15) are hardly to the point in question.—According to a responsum by Saadya (cited by Poznański, *JQR.*, N. S., III, 427) מכת מרדות consisted of thirteen stripes for the transgression of a traditional precept, such as hair-cutting on חזה"מ or wearing shoes during the days of mourning. This must have been the lenient side of מכת מרדות for slight transgressions. This number of thirteen stripes is also ordained by R. Hai, unnoticed by Poznański (in a responsum cited by Müller, *Einleit.*, 6, note, from שב"הל, II, § 150) אבל . . . משום החשר מלקין אותו י"ג שהן מכות מרדות . . . ונחגו להלקות מכת מרדות למגלה בחזה"מ ולנועל מנעלו בימי האבל ובדומה להן . . . מכלל שיש לנו מלקות קטן ומגין שהוא י"ג דתנן וכו'.

For certain transgressions, flagellation was accompanied by shaving the culprit's head and beard. Thus in ש"צ, 25 a, No. 13 (anonymous; in ה"פ, No. 94, by R. Natronai), we read that if a Jew be found guilty of having committed adultery with his female slave, he should be flogged and his hair shaved off. Likewise, in the case of adultery with a married woman, both culprits were flogged and had their hair shaved off (חש"ר, I, 29, among the הלכות קצובות of R. Yehudai = חש"ר, II, 18, l. 11, among the responsa of R. Natronai). The same punishment was inflicted for desecrating the Sabbath (חש"ר, II, 20). This strange punishment, which, as far as my knowledge goes, is not found in the Talmud,<sup>266</sup> must have been borrowed by the Jews from the secular authorities. This punishment was practised in Spain under the Visigoths. One of the decrees of King Erwich, 680-7, was that the Jews who within a year from the publication of the decree, were not themselves or had not their children baptized, should be punished by a hundred stripes, *cutting of the hair of the head*, banishment, and confiscation of property (cp. Caro, *Social- u. Wirtschaftsgeschichte der Juden*, 73). This punishment of shaving the hair must have been usual in the Middle Ages in many countries. Cp. further Dr. Büchler, 'Das Schneiden des Haares als Strafe der Ehebrecher bei den Semiten' (in *Wiener Zeitschrift für die Kunde des Morgenlandes*, XIX, 91 ff.). It seems that there existed a kind of communal prison for the internment of culprits pending

<sup>266</sup> Perhaps a reference to this kind of punishment is to be found in Sanh. 110 a top, where the wife of Korah is supposed to have said to her husband: ועוד דגיין ליה למייכו ומיטלל לכו כי כופתא 'he (Moses) shaved you all over and sports with you as (with a prisoner) in the stocks' (to כופתא, cp. also Jastrow, *Dictionary*, s. כופתא). Rashi, however, gives a different explanation.

their trial at the Bêt-Din. Thus, if a Jew committed some transgression on the Sabbath or on the Festivals, when he could not be flogged, he was imprisoned for that day, in order to prevent his escape (גמ"ט, No. 146, by Sherira; ש"ח, No. 182, and ה"פ, No. 135, by R. Paltoi of Pumbedita, 842-58; ש"ח, No. 182, cannot be by Sherira, as it contradicts גמ"ט, No. 146, whereas it agrees with ה"פ, No. 135). In all these responsa there is expressly mentioned the communal prison (בית הסהר). Likewise, in the Frankish Empire it seems that the Jewish authorities had the right of imprisoning a Jewish culprit. Thus in the year 576 C. E., we are told, St. Germanus on his journey from Tours to Severiacus found the Jew Amantius in chains and led by Jews, because he refused to obey the Jewish laws (see Aronius, *Regesten zur Geschichte der Juden im fränkischen und deutschen Reiche*, p. 13, to the year 576). However, confinement in a prison for a certain period as a punishment for transgressions was imposed by Jewish law only in a very few cases (cp. Sanh. 9<sup>3</sup>, מכניסין אותו לבימה, as regards a homicide against whom there are no witnesses, and also as regards a culprit who persists in his transgression for which he had received already twice flagellation, see Frankel, *Der gerichtliche Beweis*, p. 167, and the instructive note in Lewy, *Abba Saul*, p. 35, note 85).

(b) *Oath*. The proper oath, which was accompanied by the laying of the hand on a scroll of the Law (ספר תורה), was abolished by the Gaon R. Šadoḳ, 823-5. The reason for this abolition was because people were ready to take the oath without much consideration, and the Geonim were afraid of the serious Divine punishment consequent upon perjury (ג"ח, No. 22, by R. Natronai = ג"ק, No. 43; op. *Geon.*, II, 154 (חק"פ"ו), ש"צ, 73 a, No. 9, by R. Hai). This

change introduced by R. Ṣadok spread only gradually. In the time of R. Paltoi we find judges still continuing to adjure people with the proper oath, שְׁבוּעַת הַתּוֹרָה (cp. ג"ל, No. 10). As a substitute for the proper oath, curses used to be pronounced against any one who gave false evidence in monetary lawsuits. In order to make these curses, called גְּזֵרָה, effective, they were pronounced in the synagogue accompanied by a solemn ceremony, which we find fully described in two responsa (ג"ל, No. 10, by Paltoi, 842-58, and ש"צ, 76 a, No. 22, by R. Hai). The scroll of the Law was taken out from the ark, while the person concerned was familiarized with the curses that occur in the Bible. A bier was brought to the synagogue, and on it lay the shroud of the dead. Ashes were strewn under the feet of the person concerned, and inflated bladders as well as a cock were brought to the synagogue. The candles were lighted and the school-children were present. Then to the accompaniment of horns, the delegate of the Bêt-Din pronounced against the person concerned curses which would be fulfilled, in case he was making false statements. All the details of this ceremony, so strange and gruesome as they appear to us, had symbolical meanings, and were meant to impress upon the adjured the responsibility he undertook in making his statements before the court.<sup>267</sup> Generally, this ceremony

<sup>267</sup> ג"ל, No. 10: . . . וכשמתחייב אדם שְׁבוּעָה ובקשתם להשביעו יוציאו : ג"ל, No. 10: . . . ס"ח ויבינו אותו על הקללות הכתובות בתורה ויביאו מטה שנושאין בה מתים ויפרשו עליה כלים שהם פורשין על המתים ויוציאו שופרות ותינוקות של בית הכנסת ויביאו נאדות נפוחים וישליכו א תן לפני המטה ויאמרו בי"ד לאותו אדם שמשביעין אותו הוי יודע שלמחר אותו האיש מושלך כנאדות הללו ומביאין תרנגולין ומדליקין נרות ומביאין אפר וזעמידין את האיש שנתחייב שְׁבוּעָה על האפר ותוקעין בשופרות . . . Some of these details

used to take place in the synagogue on Mondays and Thursdays after the morning service, whilst all the worshippers were present (ג"ל, No. 9, probably by R. Hai). Even married women had to go through the same ceremony in public (ש"צ, 69 a, No. 72, by Natronai, which agrees with the responsum quoted in ג"ל, No. 9, in the name of R. Şemah). Later Geonim, however, seem to have spared married women this publicity, and allowed them to be adjured privately in the presence of three Jews (ג"ל, No. 9). Another kind of adjuration was administered in cases of suspicion. For example, if a Jew suspected another Jew of having stolen something from his house or of having denounced him to the secular authorities, he could, after having substantiated his suspicions, obtain from the Bêtdin the permission of having a ban or curses announced in the synagogue anonymously against anybody that caused him harm. This permission, which was called פתקא דלמואתא (ג"ה, Nos. 1 and 333), was, however, not accompanied by the ceremony described above (cp. ג"ה, No. 137, by R. Hai; גמ"מ, No. 193, by R. Joseph Ibn Abitur of Cordova; ק"ק, No. 13). The same permission was granted by the Bêtdin, on the demand of one of the parties concerned in a lawsuit, against any person that refrained from coming to the Bêtdin and giving his evidence (see the Gaonic Document published by Aptowitzer, *JQR.*, N. S., IV, 28, No. VII). R. Hai, as well as his predecessors, were very

are found in Lev. R. c. 6 : אמר רב אייבו מפני מה משביעין האדם בספר : תורה ומביאין לפניו נודות נפוחים לומר אתמול היה הנוד הזה מלא גידים ; ועצמות ועבשיו הוא רק מכלן ; Pes. R. c. 22 (ed. Friedmann, 113 b) : אמר ר' סימון מפני מה משביעים את האדם ונותנים לפניו נודות מנופחות ותוקעים בשופרות לומר אתמול היו מלאין גידין ועצמות ועבשיו הם ריקות מכולם כך כל מי שנשבע על השקר לחברו סופו לצאת ריקם מכל נכסיו.



careful in giving such a permission to claimants, and they would grant it only on the demand of orphans or their guardians to be used against anybody that concealed money entrusted to him by their father.<sup>268</sup>

(c) *Excommunication*. To enforce obedience to and acquiescence in all their decisions, the Bêt-Din had only the ban at its disposal, by means of which the culprit was entirely separated from Jewish society. The Geonim, as the spiritual leaders of Jewry, were anxious to make the ban as effective as possible. The ban announced against some Jew used to be sent to all the communities of the district or the country wherein the person concerned resided. In this way, the effectiveness of the excommunication was to be secured. The utter separation from all intercourse with his co-religionists must have weighed heavily upon the excommunicated, especially in those times when a Jew almost exclusively moved in Jewish society. A full description of the extent of the ban is given in a responsum by R. Paltoi, 842-58 (ג"ל, No. 10, and with some changes in ש"צ, 75 a, No. 14).<sup>269</sup> There was a milder degree of

. . . והוּו יודעין שאין אנחנו ולא אבותינו רגילין ליתן; ג"ל, No. 22 :  
 רשות לכל מי שיבא ויאמר כתבו לי פתקא דלטוותא ותנו לי להחרים  
 סתם בצבור אלא כך אנו אומרים אם אתה תובע אדם ידוע הרי הדיין  
 בנייכם ואם לא מסור אתה בביתך דין על המעלים ממך וקלל אותנו  
 כרצונך, אבל יתומים שבאו בטענה הם או אפטרופוס שלהם ואמרו  
 אין אנו יודעים אצל מי יש למורי'שנו כלום כותבין פתקא דלטוותא  
 Cp. גמ"מ, No. 22, end, by Saadya.

<sup>269</sup> The text in ג"ל is more correct. Thus the terrible phrase ועקרו  
 חתבו ציצותיו ועקרו מוותו:—: ג"ל reads in ש"צ in מוונותיו  
 With agrees the *Gaonic Document* published by Aptowitz, *ibid.*, 26, No. IV.  
 The Karaite ban was likewise stringent. See Benjamin Nahavendi (משאת)  
 ואם לא יבוא [הבע"ד לב"ד] מקללן אותו ערב ובוקר (בנימן, 2 a bottom)  
 בב"ד ז' ימים ע"ד התורה באיה צד נהגים עמו לא נשאל בשלזמו ולא

excommunication, called נדוי or שמתא, which enjoined the people to keep aloof from the excommunicated. The document called פתיחא, issued by the Bêt-Din to this effect, was valid for thirty days (cp. ש"ת, Nos. 41-2, by R. Hai; ג"ה, No. 182, and p. 357 note to p. 84; *Gaonic Document*, No. III, published by Aptowitz, *ibid.*, 26). If the excommunicated remained obstinate, the more severe form of excommunication, the so-called אחרמותא or חרם, was used. The effect of this ban must have been crushing, if carried out in all its severity. In all the synagogues of the neighbouring communities the ban was announced, declaring the food and drink of the culprit to be like that of a non-Jew and forbidding, under penalty of excommunication, any Jew from keeping company with the excommunicated person, or to circumcise his son, or to teach his children in the public schools, or, finally, to assist at the burial on the death of a member of his household. Sometimes the ban went so far as to declare those who ventured to talk to the person under the ban, as being *eo ipso* in his position (ש"ת, No. 42, by R. Hai, and גמ"ז, No. 217).

It would be unjust to attack R. Paltoi for this frightfulness of the ban (as Weiss, דרו"ר, IV, p. 15 top, note 10, and p. 116, does), since R. Paltoi was not the inventor of this form of excommunication. It must have been in practice long before him (see also Gr. V<sup>4</sup>, 139, note 4). The ban was handled with as much severity also by the contemporary Christian ecclesiastical authorities in Babylon. In fact, it was in the general way of coercion in that period,

נעמוד אצלו ולא נאזין לו ולא נקבל ממנו כל מתנה וכל תשובה ונבדל ממנו ונחשבהו כמת עד שיבא לב"ד ויקבל הדין במה אשר העוה.

and one person ought not to be blamed for not being above and beyond his time. In the time of R. Hai, the grim severity of the ban was somewhat relaxed. The Gaon is of the opinion that the new-born son of the excommunicated should be circumcised, and also that if the man died during the term of his excommunication, he should be buried (ח"ט, No. 41). It must be admitted that those affected by the ban suffered considerably under its weight. However, a strict handling of the ban, as the only means of coercion at the disposal of the Bêt-Din, or of the communal leaders, was on the whole necessary for the preservation of the prestige of the authorities. This becomes evident when we consider in particular the ends which the ban served to attain.

4. The duties which were entrusted to the care of the Bêt-Din in every community can be divided into two chief branches. The one consisted in the dispensation of justice in monetary lawsuits, while the other comprised the supervision of the practice of morality and religion by the masses. In carrying out their duties in both these spheres of activity, the Jewish courts must have made frequent use of the ban, in order to bring pressure to bear upon refractory people.

(a) *Monetary Affairs.* The procedure of the Bêt-Din in helping a creditor to recover his money in case the debtor declared his insolvency is fully described in a responsum by R. Natronai in ח"ט, 86 a, No. 15. Naturally, the procedure described in the Talmud served as an example for the Bêt-Din in the Gaonic period. But nowhere in the Talmud is there to be found such detailed descriptions of the procedure of the Bêt-Din as in the Gaonic responsa. To take the case of insolvency, the creditor

was entitled to recover his money from all those people who bought property from the debtor after the date of his loan. To this effect the Bêt-Din would issue to the creditor a document of exactment, שטר טירפא, while destroying his original bond issued by the debtor. In case the people who bought the debtor's property refused to pay to the creditor his due, the milder form of the ban would be declared against them to be in effect for thirty days. If after this time the excommunicated persons persisted in their obstinacy, the severer form of the ban, the so-called אחרמיתא, was brought to bear upon them to last for the same time of thirty days. If this had no effect, the Bêt-Din finally allowed the creditor to enter perforce the property of the buyers, and to appropriate with the help of the surveyors appointed by the Bêt-Din, a part of the property covering the amount of his loan. To this effect, the creditor received שטר אדרכתא while his טירפא was destroyed. Finally, when already in possession of the property, the creditor received a deed of property signed by the Bêt-Din in lieu of the שטר אדרכתא. The same procedure was in use in the case of a debtor refusing to appear before the court, or if he left the country after an adverse decision of the Bêt-Din (see the *Gaonic Decrees and Documents* published by Aptowitzer, *JQR.*, N. S., IV–VI, 25–8; ג"ה, No. 234, by R. Hai). Several other instances of coercion by means of the ban in civil lawsuits are discussed in several responsa (cp. ג"ה, Nos. 184 and 233; ש"צ, 77 a, No. 32; 84 b, No. 4, and 87 a, No. 17). In short, the Bêt-Din endeavoured to safeguard the just claims of people and to forestall any dishonest dealings. An interesting case is reported in *Geon.*, II, 154, l. 1 ff., about a debtor who tried to avoid paying his debts by

attempting to give a bogus document of divorce to his wife, who in her turn would claim all the property of her husband for her Ketubah and in this way outwit the creditors. In this case again, the ban was useful for bringing pressure to bear upon the debtor.<sup>270</sup> Of special importance was the duty of safeguarding the interests of orphans. The Bêt-Din is styled 'the father of orphans'. Thus the Jewish court had to demand from the guardians accounts as to how they managed the affairs of orphans entrusted to them (see ג"ה, No. 178 = גמ"מ, No. 5, ג"ה, No. 324, and גמ"מ, No. 217). No guardian could relegate his charge to other people without the permission of the Bêt-Din (*Geon.*, II, 101 (VIII)). In case there was no trustee appointed by the testator, the Bêt-Din would appoint a respectable and worthy person to act as such (cp. the Gaonic Document שטר אפטרופא, published by Aptowitzer, *ibid.*, 29, No. IX). The Bêt-Din further watched carefully over the credibility of witnesses who gave evidence before Jewish courts. If a witness was found out as having given false evidence, he was excommunicated, flogged, and publicly declared to be a false witness (see גמ"מ, No. 88, end ; ג"ק, No. 3, by R. Nahshon ; ש"צ, 85 b, No. 13 ; 87 a, No. 16 ; 88 b, No. 22 ; 89 a, No. 25 ; 92 a, No. 42 ; 92 b, No. 45). In all cases such as discussed above, a firm handling of the ban was undoubtedly essential in order to secure honest dealing and general peace in the communities.

(b) *Religious and Moral Supervision.* In this sphere of activity we shall find instances of coercion by the Bêt-Din which appear excessively harsh to modern people.

ולישתמט וליתחרם בשיפורי ערב ובוקר בשבתות ובי"ט בכל בתי <sup>270</sup> כנסיות עד שישראלים.

We shall, however, see that some of these cases were due to the opposition of the *Ḳaraïtes*. Religious practices, by themselves of minor or of no importance, became the battle-cry of the two opposing parties of *Rabbinites* and *Ḳaraïtes*. The practice of quite an insignificant custom became the criterion of a man's adherence to the one or the other party. Accordingly, the *Geonim* acted as only partisans could act, and proceeded with great severity against those that showed the slightest sign of disloyalty to *Rabbinism*, as conceived by the heads of the Academies. As regards matters of public morality, it is well known that from times of yore the spiritual leaders of Jewry were very anxious to maintain the standard of purity of the Jewish home as high as possible. Accordingly, the *Geonim* were relentless in their severity against the offspring of illegal marriages, in order to prevent their mixing with the bulk of the people. These offspring were entirely excluded from the society of Jews, and were regarded as the outcasts of humanity (see the important responsum of R. *Natronai* in ש"צ, 24 a and b, Nos. 7 and 10, concerning the children of Jewish sectarians who desired to rejoin the general body of conforming Jews; ג"ה, No. 535, p. 264 top). We have seen above (p. 344) what a severe punishment was meted out in cases of adultery (cp. also *Geon.*, II, 155, l. 29). On the other hand, the *Bêt-Din* was very careful in accepting any evidence which would cast a slur on the respectability of any Jew. No investigation was ordered by the *Bêt-Din* unless there were persistent rumours about a Jew's moral behaviour.<sup>271</sup> Sometimes, in the case of evil rumours

<sup>271</sup> מצאנו קדמונינו ברבר כזה כשהיו העם : ש"צ, 27 b, No. 38, by *Natronai* : מרגנין ברברים שאינן טובים . . . ולא מצאנו שהיו חוקרין על מי שחוקתו שהוא בשר כשלא היו העם מרגנין עליו ובמעשיהם החקנו אנחנו . . . Cp. ש"ח, No. 7.

persistently recurring about certain people, the Bêt-Din would act according to the Talmudic principle of מלקין על. לא מוכה השמועה. But the Bêt-Din was very judicious in such matters. Under no circumstances would this principle be applied to a woman, in order not to cast a slur on her children (see ש"ת, No. 179; ה"פ, No. 94, by R. Natronai; Pardes, 25 b). In order to put a stop to rumours which malicious people were ready to invent and spread, the Bêt-Din would order that flogging should be meted out to anybody that came singly with evidence against people in matters of morality and religion (ש"ת, No. 8). According to Jewish law, the guilt of a man could not be established unless on the evidence of two people, whereas the testimony of one witness would serve no other purpose but to spread unsubstantiated rumours about innocent people.

The religious supervision of the Bêt-Din was variegated and many-sided. Sherira reports that already from early times the Bêt-Din used to have a kind of secret police, who searched whether people did not hide anything containing leavened bread (חמץ) during the festival of Passover.<sup>272</sup> Owing to the opposition against the K̄araites, the Geonim adopted a strict attitude in the case of some minor transgressions. Thus for doing work on the intermediate days of the Festivals (חול המועד), excommunication as well as flagellation were meted out to the culprit.<sup>273</sup>

הלכך אכריו דאיסורא הוא דלא לעבדין הכי : ש"ת, No. 270, end : ומאן דעביד הכי בתר התראה שמתוהו ופירשו מיניה ובדקו אבחר מאן דעביד הכי דאנחנא וכל רשואתא דמן קדמנא רגילין לשדורי שמועי ושלוחי . . . ולאבדוקי מאן דמצנע מידעם . . .

<sup>273</sup> ש"ת, No. 216, probably R. Natronai, to whom probably the whole group of responsa, Nos. 213-20, belongs : . . . וכל מקום שאי אפשר לקנוס בגון חייט או אורג שהם עושין מלאכה לאחרים שאי אפשר לקנוס

The same punishment was inflicted on one that married on a Festival or on חול המועד (ש"ת, No. 218, end), or had his hair cut on חוה"מ, or wore shoes during the seven days of mourning.<sup>274</sup> To such length did this opposition against the Ḳaraite go, that R. Natronai in a responsum enjoins that a Jew who does not eat warm food on the Sabbath, prepared in the traditional manner of הטמנה, should be excommunicated from the Jewish community.<sup>275</sup> This Gaon was particularly vehement in his opposition against the Ḳaraite. In a passage preserved in סר"ע (ed. Warsaw, 37 b), we find R. Natronai giving vent to his strong feelings as regards those people who shorten the reading of the Hagada of Passover by leaving out the Agadic portions. By doing so, they were held to betray Ḳaraite leanings, since, as is well known, the Ḳaraite were opposed to the Talmud as a whole. Whoever changed the traditional text was in the eyes of the Gaon a heretic who should be excommunicated.<sup>276</sup>

לממון של אחינו ישראל קונסים אותם בעצמם. משמתין ליה ומלקינן ליה עד דמקבל עליה דינא . . .

<sup>274</sup> See above, p. 343, note 265, end: ונחנו להלקות מכת . . .

. . . הלכך כל מי שאינו אוכל חמין בשבת לפי אותו : ש"ת <sup>275</sup> No. 34 : הדרך (הטמנה i. e.) בר נדוי הוא ודרך מינות יש בו וצריך להפרישו מקהל ישראל ויש לנו לדקדק אחריו . . .

אלא כל שעושה כן מין הוא וחלוק לב הוא וכופר בדברי חז"ל <sup>276</sup> ובזה דברי משנה ותלמוד וחייבין כל הקהלות לנדותו ולהבדילו מקהל ישראל . . . ואילולי מינא שיש בלבבם וחלוק לבם ואין רוצין לומר דברי משנה ותלמוד . . . אלא הללו מינין ומלעיגין ובזין דברי חז"ל ותלמידי ענן ירקב שמו אבי אביו של דניאל חוט המשולש ברשע ובמינות שאמר לכל התועים והזונים אחריו עזבו דברי משנה ותלמוד ואני אעשה לכם תלמוד משלי ועדין הן בטעות . . . ועכשיו צריכין לנדותם שלא להתפלל . . . עם ישראל בבית הכנסת ולהבדילם . . . Cp. Schorr, *Hehaluz*, XIII, 49, note I.



Apart from the zeal of the partisan, intolerance was rampant in those times within all religious communities. Even the Geonim were not free from this general foible. On the whole, the Bêt-Din acted with strictness in cases of transgressions against important laws. For desecrating the Sabbath, which in olden times entailed capital punishment, the Geonim imposed the punishment of flagellation, and the culprit was publicly abused (ש"ח, No. 45, by Hai; cp. ש"צ, 91 b, No. 38). Similar was the case with a priest (כהן) who married one of the class of women prohibited to him in the Bible (cp. ש"ח, No. 180, by Sherira; ה"פ, No. 88, by R. Samuel b. Ḥofni; חש"ר, II, 7, ll. 11-15). Even if the priest renounced his priesthood, he would remain under the ban until he repented. From R. Hai's responsum in ש"ח, No. 231, we gather that in his time there were many priests who married illegally and disobeyed the warnings of the Bêt-Din.<sup>277</sup> From a responsum in גמ"מ, No. 103 (this detail is missing both in ש"ח, No. 142, and in ג"ג, No. 36), it seems that the ban could be extended even to a non-Jew in case he blasphemed the name of God. This ban was probably intended to prohibit Jews from having intercourse with the offending non-Jew. For further details about the use of the ban by the Bêt-Din, see ח"ג, No. 15, by R. Natronai = *Geon.*, II, 30 ff., by R. Şemah; ה"פ, No. 26, by R. 'Amram; and *Gcon.*, II, 26 (II), by

<sup>277</sup> Surprising is the statement of R. Şemah, in ש"ח, No. 177, and ה"פ, No. 84, concerning a priest who married a woman that had been divorced: ומיתבעי לשמותיה עד דפריש מינה ואלקוייה ויראו אחרים ויוסרו, ואי הוו חיישינן דאזיל לדוכתא אחריתי ופריש ידיה הוו קצין ליה לראש . . . . אצבעתיה וקבעין ביה מומא דלא ליפריש ידיה. Had the Bêt-Din in those times the power of inflicting such punishment?

R. Naḥshon. The general attitude of the Geonim in matters of religion and morality is well summed up by Sherira (נמו"כ, No. 44 = *Geon.*, II, 206-7): ואמונה הוא שיגדרו: גדרות בישראל ולא ירבו לפרץ פרץ כי פרצה קוראה לנב. . .

5. Another important branch relating to the welfare of the communities, and which the Bêt-Din had to attend to, was the maintenance of public order. Cases of insults and fights arising between people, included in the Talmudic term of דיני קנסות, could, according to an old custom, be settled only by Jewish courts in Palestine (Baba ḥamma 84; cp. ש"צ, 29 a, Nos. 1 and 2). However, such a state of affairs became dangerous to the peace of the communities in Babylon as well as in other countries outside Palestine since by being scot-free, violent people would frequently take recourse to insults and violence. Accordingly, the Geonim had to find some device of overriding the Talmudic rule of אין גובין דיני קנסות בבבל. This they did by simply forcing the culprit, by means of the ban, to conciliate his victim. The Bêt-Din could not impose the fine on account of the Talmudic law referred to. Thus they left it to the culprit to come to an agreement with the person whom he made to suffer. As long as no such settlement was agreed to, the culprit would remain under the ban. The first to introduce this device for the sake of public order and safety was R. Ṣadoḳ of Sura, 823-5 (cp. ש"צ, 29 a, No. 2, by R. Natronai; ה"ג, No. 60, and ש"צ, 31 a, No. 14, by R. Ṣemaḥ, probably of Sura, 882-7). R. Ṣadoḳ's practice was followed by his successors. Several responsa, dealing with cases of insults and personal injury, show us clearly the practice of the Geonim after R. Ṣadoḳ (ה"פ, No. 94, by R. Natronai; Pardes, 24 d and 25 a top, by R. 'Amram, 856-74, and R. Mattithiah, 861-9; ש"צ, 29 a,

No. 3, by Sar Shalom, 849-53; cp. ש"צ, 29 b, No. 4).<sup>278</sup> In Palestine, however, these דיני קנסות were attended to by the Bêt-Din even in the time of the Geonim. The Jewish judges used actually to fix the fine for insults and personal injuries.<sup>279</sup> From responsa by R. Meshullam of Lucca we learn the interesting fact that in Italy and France, to which countries R. Meshullam in all probability sent his responsa, the Jewish judges used to fix the fines just as in Palestine. It seems that in these countries they took the Talmudic maxim of אין גובין דיני קנסות בבבל to refer only to Babylon, but not to the other countries of the diaspora; whereas the Babylonian Geonim understood it to include Babylon 'and how much more the other countries' (וכל שכן שאר ארצות) ש"צ, 29 a, Nos. 1 and 3). Thus, in Italy and in France, they had no need of taking recourse to the device introduced by R. Šadok. There used to be fixed fines for insults. However, when the insult and damage were outrageous, the Bêt-Din would considerably augment the fixed fine.<sup>280</sup>

There were several other instances wherein the Bêt-

<sup>278</sup> See also מנהג בשתי ישיבות של: ס' בשר ע"ג נחלים (l. c., No. 22): נשיא ובישיבות של ראש גולה (?) שאע"פ שאין קנס בבבל מנדין אותו שיפיים בעל דינו בכדי שיפסקו עליו רבנן תנאי וסבוראי אבל אי בעי טפי לא שמעינן להו. Cp. further, Ḥefes b. Yaśliah, ed. Halper, 222 = JQR. N. S., V, 100, l. 12 ff.

<sup>279</sup> Cp. ש"צ, 30 a, No. 7: responsum from Palestine; 30 b, No. 13 = תש"ר, II, 34, No. 15: ובמקום שגובין קנסות בא"י; Pardes 24 d: . . . והכי אמר רב כהן צדק ז"ל אם טוען ואמר כיון שאין דנין דיני קנסות בחוץ לארץ שלח עמי בעל דיני לא"י ששם דנין דיני קנסות. משלחין אותו עמו. . .

<sup>280</sup> Cp. ש"צ, 31 a, No. 16: מי שחבל ג"ק, No. 125; ג"ק, No. 135 = ש"צ, 31 a, No. 16: בחבירו וקנסוהו בי"ד וכתבו וחתמו ונתנו ביד החובל. . . See also ג"ו, No. 44.

Din imposed its decision by means of the ban. To a very good purpose was this coercion exercised by the Bêt-Din, e.g. in the case of a woman who demanded her divorce after her husband—in those days of polygamy—added another wife to his household as a rival to his first wife (צ"ש, 67 b, No. 60). Sometimes it would happen that though the married life became intolerable, a husband would refuse to grant divorce unless his wife renounced her claims upon the Ketubah (צ"ש, 15 a, No. 27 = 69 b, No. 74; cp. ג"ה, Nos. 319 and 345). In all like cases, the Bêt-Din compelled the husband to grant the divorce. Moreover, if a husband left for abroad without providing for his wife, the Bêt-Din used to sell a part of his property for the maintenance of his wife (cp. צ"ש, 63 b, No. 38, by R. Paltoi). R. Hai reports that there existed a covenant strengthened by a ban not to divulge the secrets of mysticism to unworthy people.<sup>281</sup> On the whole, in order to assert its prestige, the Bêt-Din usually made use of the ban. Above (p. 341), mention was made of the fact that if, e.g., a Jew took an oath not to obey the summons of the judges of his community, he would be coerced by means of the ban to forgo his oath. However, we learn from the responsa that in some communities the Bêt-Din was unable to enforce its ruling on the members of the community (cp. above, pp. 143-4; גמ"ט, No. 153, by some Spanish or French scholar).

6. The last paragraph of this chapter will deal with the powers invested with the Exilarchs in Babylon as well as with the communal leaders outside Babylon. Sherira in his *Letter* (p. 33) tells us that during the reign of the

<sup>281</sup> ג"ה, Nos. 29 and 31; ש"ת, No. 14: . . . ויש ברית בחרם בית דין: ש"ת, No. 14: . . . שאין למסרם אלא לנאמנים ולמי שרואין בו הכרת פנים שראוי לבך.

Persians the Exilarchs used to wield great power with the help of the secular authorities. The Exilarchs retained this influence for a long period after the advent of the Muslims. It was only in the time of David b. Yehuda that the Exilarchs lost much of their prestige by being deprived of the Caliph's support.<sup>282</sup> What this reduction of power amounted to, is explained by a statement of an Arabic writer, Othman al-Gahiz (died in 869), published by Goldziher, *RÉJ.*, VIII, 122 ff. This writer, who probably refers to the conditions that existed in his time, states that 'neither the Catholics nor the Exilarch have the right in the Muslim Empire to condemn any of their respective co-religionists to imprisonment or flagellation. They possess only the power of excommunication.' But it has been sufficiently shown in the preceding pages (p. 342 ff.) that the Bêt-Din continued to inflict the punishment of flagellation, and even imprisonment, down to the time of the last Geonim (cp. also Weiss in *בית הלמוד*, V, 268). Possibly before the change referred to above, the secular authorities would assist the Bêt-Din, through the intervention of the Exilarch, in carrying out its decisions even in religious matters. Whereas in later times, a culprit could seek protection with the secular authorities, in order to escape flagellation (see above, p. 122-3). Thus it resulted that the only means of coercion at the disposal of the Bêt-Din was the ban. A culprit would remain

<sup>282</sup> . . . והוא להק לרישי גלואתא מרות קשה ושולטנותא רבתא בימי פרסיים ובראש ימי ישמעאלים דהוו זבנין ליה לריש גלותא בדמים גדולים . . . ובאמצע ימי ישמעאלים בימי דוד בן זכאי (יהודה *v. l.*) הגשיא . . . אישתפלו מן שולטנותא דמלכא . . . Cp. Gr. V<sup>4</sup>, 445 f. According to Barhebraeus this happened in 825, during the reign of the Caliph Maamun, 813-33.

under the heavy burden of excommunication as long as he did not submit to the flagellation imposed by the Jewish authorities. As regards the powers of the Exilarchs after the curtailment of their influence, we learn from Nathan's well-known report that the Exilarch David b. Zakkai wielded great authority, and that he was greatly assisted by the Caliph's authorities (Neub., II, 86, see 81 bottom). In view of all this evidence, the above statement of Othman al-Gahiz cannot be accepted without certain qualifications, at least as far as it refers to the Exilarch.

Very little is known of the procedure the Jewish communities, both in Babylon and in the other countries of the Diaspora, adopted in appointing their communal representatives. Whereas it is known that the Exilarch, as well as the Academies, appointed judges to officiate in such Babylonian communities as were under their jurisdiction, it is nowhere mentioned that the Exilarch could, for example, foist his nominees upon the communities to occupy the office of 'heads of the community', ראשי הקהל, whom Nathan mentions in his Report (Neub., II, 85-6). Interesting is the fact that a certain Nagid of Egypt in an account of his installation (published by Mr. E. N. Adler, *JQR.*, IX, 717-18) states that he is holding his office with the permission of the Exilarch Ḥisdai.<sup>283</sup> But this Exilarch (also styled Nasi) probably resided either in Palestine or in Egypt. There is at present no further material available to give us a clear idea about the authority the Exilarchs possessed over the Jewries outside Babylon.

<sup>283</sup> וכי אני עוצר בעם ד' אחריו ברשיון אדוננו ראש הגולה אשר אנחנו וכל ישראל באים תחת שבט מלכותו וכולנו מתחזקים באלהי אמן ובשער נשיאותו ירומם. See Kaufmann, *JQR.*, X, 163-4; on the Nagid in general, see Neubauer, *JQR.*, VIII, 551-5. See also Pozn., *Babyl. Geonim*, 112-13.

In Gaonic documents addressed to Jewish communities the communal representatives are mentioned in the following order: 'the scholars, the judges, the heads of the community, the learned of the community, the scribes, the Parnasim, other communal workers, and the pupil-teacher's'.<sup>284</sup> Aptowitz has already pointed out that Graetz (V<sup>4</sup>, 139) was wrong in making the Parnasim (פרנסי כניסיות) the heads of the community, whereas they are mentioned only after the communal scribes. Another mistake of Graetz, which Aptowitz omitted to point out, is to take ולבררין, mentioned in ש"צ to mean 'the electors' of the community (Borrerim, בוררים), who, according to Graetz, elected the heads of their community 'in accordance with some unknown system of franchise'. The parallel

<sup>284</sup> *Gaonic Documents* published by Aptowitz, *JQR*, New Series, IV, 26, Nos. III and IV: [ובני בני] (ובני בני) וראשי כנישתא (ובני בני) וראשי כנישתא. The parallel in ש"צ לחכמים וראשי כניסיות וזקנים ולבררין ופרנסי כניסיות. 75 a, No. 14 reads: Cp. Aptowitz's remarks, pp. 41-2.—Ben Meir addresses the Babylonian communities as follows (*REJ*, XLII, 180, l. 24 ff.): לבל המון קהלות אחינו: ישראל הדרים במדינת שנער הרבנים וזקנים וראשי כניסיות ובתי אבות ופרנסי צבור וגוברי עם ומרכולים ומלמדים וחונים ויתר אחינו יש' וכו'. Of interest is the document of appointing a president (ראש) of a community as preserved in Albarceloni's *השטרות* ס' (cp. vol. VII, 462, note 7). It seems to me that Albarceloni found this document already in Saadya's work. Brit. Mus. Add. 27,181, fol. 26 a, reads: ובאנו לפרש בכאן מניין השטרות וענייניהן לעניות דעתך ומצאנו בחבור רבי סעדיה גאון זל שהזכיר מניין השטרות ומצאנו נז' (מ') חוץ מין שטרות ויש לך שטר: 27 a bott. ; אחרות קטנות שהן צורך תקנות הזקנים והראשים . . . אחר אפטרופוס שאינו מעסקי משאות ומתנות אלא שבוררין להם הקהל אדם למנותו עליהם ראש וכותבין לו שטר ואעפ' שכתבוהו ראשונים בשטרי ומצאנו: (ed. Halb., p. 7); אפטרופוס אינו נקרא אלא שטר מינוי וזה טופסו בקצת נוסחי עתיקי בשטרי השטרות דכתיב בהו להאי לישנא שטר אלא כתבנוהו כאן לפי שנמצא בנוסחא עתיקא: p. 8; אפטרופוס . . . בכלל השטרות.

in Aptowitzer's *Gaonic Documents* which reads וסופרי makes it clear that ולברין in ש"צ is nothing else but the correct form for the more usual ולבלין (*librarius* = לבלר), scribes!

Interesting details about the internal organization of the Jewish community in Egypt are given by Gottheil (*ŴQR.*, XIX, 499-501) in extracts from the work of al-Ḳalkāshandī (d. 824 A.H.) who in his turn has as his authorities writers of the eighth century A.H. As the period dealt with in our present treatise ends about 1050, al-Ḳalkāshandī's statements cannot be discussed here fully. I should only like to point out that the distinction al-Ḳalkāshandī draws between the Ḥazzān, who 'must be well versed in preaching' and who 'ascends the Minbar (= Almemar) and exhorts them (i.e. the people)', and 'the Sheliaḥ-Zibbūr, i.e. the Imām who leads them in prayer', is not borne out by Jewish-Arabic writers in Egypt. Thus, e.g., Maimonides in an Arabic responsum (published by Friedlaender, *ŴQR.*, N. S., V, 7 ff.) uses the terms חזן and ש"צ promiscuously for the reader.

On special occasions, the Geonim invested the communal leaders with great authority. When the Jewish community of Nefusa (cp. above, VII, 484) was reorganized after the town had been sacked, many communal questions demanded settlement. A matter that called for particular attention was the fact that all the Ketubas were burned. This gave rise to many disputes as to the amount of dowry each woman claimed, especially since many women had the amount of their dowries twice or three times over-estimated in their Ketubas. The Gaon R. Ḥananiah, 938-43, advised the communal leaders to convene a meeting for estimating each woman's dowry according to the



economic position of her husband. These resolutions were then to be enforced by means of the ban.<sup>285</sup> Likewise, for the purpose of obtaining a true estimate of each member's taxing capacity, and in this way a just distribution of the taxes that were imposed upon the whole of the community, the leaders used to announce a ban against those that made false statements about their economic position (cp. גמ"מ, No. 205).

Usually in the communities where there existed a Bêt-Din, conjoint proceedings would be taken by the Bêt-Din and the communal leaders. In places where no permanent Jewish courts were established, the communal leaders, probably conjointly with the scholars of the town, settled monetary disputes and cases pertaining to public order. In the responsa that deal with these cases קהל usually stands for the communal leaders (cp. ג"ק, No. 125; גמ"מ, No. 217; ש"צ, 84 b, No. 4; נ"ה, No. 346, sent to Kairovan in 991; cp. *ibid.*, 179, note 1). In ג"ו, No. 82, there is mentioned the case of some Jews giving evidence before the קהל to the effect that certain of their co-religionists spoke heresy. One of the suspected takes the oath to prove his innocence. R. Aaron, Gaon of Pumbedita, 943-61, concludes his responsum (ח"ג, No. 37) with the demand that the elders should, on receipt of his responsum, meet for the purpose of reading the Gaon's answer and acting

... כך היא תקנת הדבר שיתקבצו זקני המדינה ויהיו כולן בהסכמה<sup>285</sup> אחת ויהיו לו כתובותיהן חק לפי שהיו יודעין מנהג מדינת העשיר לפי עשרו והעני לפי עניו והבינונים לפי מה שהיו . . . ויגורו הוקנים גזרה וישימו את הדבר עליהם לחוק ולמשפט וכל אשר לא ישמע ויקבל עליו חק הוקנים יגדלו ויחרימוהו ויגורו אותו שיחזור למוטב . . . ממקראות ושמועות הללו נלמד שרשות ביד זקני העיר לתקן תקנות לבני עירם ולכונן . . . את בני עירם למה שתקנו . . .

in accordance with its contents. Usually the communal leaders had the supervision of the charitable legacies (see above, p. 341). In גמ"מ, No. 173, there are mentioned communal workers who looked after the poor in their community (. . . לערים והם שהיו זקוקים בספוק העניים).<sup>286</sup> Interesting is the custom of whole communities binding themselves by means of an oath or a ban, publicly announced, to adhere to some institution agreed upon for the communal welfare, or not to use the public funds until they reached a certain amount. Sometimes it would happen that the new institution could not be followed by the majority of the community; or, to take the second case, that some important events demanded the immediate use of the communal funds. In such eventualities, the Geonim were consulted as to how to dispose of the incubus of the oath or the ban entered upon by the community on an earlier occasion. Usually the Geonim allowed the community in question to alter its decision in accordance with the pressing requirements of the changed conditions (see ת"ש, Nos. 33, 139, and 339; ג"ל, No. 41; ה"פ, No. 116).

<sup>286</sup> The Bêt-Din possessed also the right of supervising the communal charitable legacies, probably conjointly with the heads of the community (cp. גמ"מ, No. 162, and ש"צ, 83a, No. 22).

(*Concluded.*)